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LETTER

ADDRESSED TO THE

PRESIDENT OF THE UNITED STATES

ON

SLAVERY,

CONSIDERED IN RELATION TO THE

CONSTITUTIONAL PRINCIPLES OF GOVERNMENT

IN

GREAT BRITAIN AND IN THE UNITED STATES.

BY AN AMERICAN CITIZEN.

"The best way of determining disputes, and of investigating truth, is by descending to elementary principles. Any other method may only bewilder and misguide the understanding; but this will soon lead to a convincing and satisfactory crisis."—ALEX. HAMILTON.

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LETTER ON SLAVERY.

Hon. FRANKLIN PIERCE,

President of the United States.

Sir,

Permit me to address to you the following Letter on SLAVERY, considered in its relations to the Constitutional Principles of Government in Great Britain and in the United States.

African slavery was introduced into the American Colonies almost from their first settlement, and continued under the sufferance of the British government. It had also been tolerated in England. The practice, however, of holding human beings in slavery was strongly disapproved of, so that, in 1771, there came before the King's Bench (a Court in which the judges sit in place of the sovereign, to decide upon and declare his rights, and the rights of his subjects) the case of *James Sommersett*, a negro and a native of Africa, whence he was carried, in the course of trade, to Virginia, and there sold as a slave to Charles Steuart, who took him to London, where he fled from his master, and was arrested and confined in irons on board a ship called the Ann & Mary, John Knowles, commander, bound for Jamaica, with a view to selling him there as a slave. He was brought up on a writ of *habeas corpus*. The question before the Court was whether the master had just cause of detainer; or, in the words of Lord Mansfield, "the question now is, whether any dominion, authority, or coercion can be exercised in this country [England] on a slave according to the American laws?"

On the 22d of June, 1772, Lord Mansfield declared the unanimous opinion of the Court that Sommersett was to be set at liberty, and that slavery was inconsistent with, unsupported and forbidden by, the principles of the Common Law and of the Constitution of England. In conclusion, he says, (*Howell's State Trials, Vol. XX, p.* 82,) "The only question before us is, whether the cause on the return is sufficient: if it is, the negro must be remanded; if it is not, he must be discharged. The return states that the slave departed and refused to serve, whereupon he was seized to be sold abroad. *So high an act of dominion must be recognized by the law of the country where it is used. The power of the master over his slave has been exceedingly different in different countries. The state of slavery is of such a nature that it is incapable of being introduced on any reasons, moral or political, but only by positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory. It is so odious, that nothing can be suffered to support it but positive law.* Whatever inconveniences, therefore, may follow from the decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged."

By this decision, not only was Sommersett discharged and adjudged to be a free man, but some 14,000 or 15,000 other persons, according to the estimate of the counsel for the master, before held in slavery in England, were made free persons, whose value, at the estimate of £50 each, involved an amount of "inconveniences," or of loss to the holders, of nearly four millions of dollars. By this decision, as far as the jurisdiction of the Court of the King's Bench extended,—that is, all over England,—slavery was *actually* abolished; and the *principle* of freedom, as a part of the Common Law, and of the English Constitution, was established throughout the British dominions, including the then British Colonies in North America, now the United States of America, as

well as all other British possessions, and was also equally applicable to all possessions afterwards attached to the crown of Great Britain. From that time, says Cowper,

> "Slaves cannot breathe in England; if their lungs
> Receive our air, that moment they are free;
> They touch our country, and their shackles fall."

By a decision of the Court of Sessions, slavery was *actually* abolished in Scotland, in 1778, and the *principle of freedom confirmed* as a part of the Common Law and of the British Constitution, and was also made a part of the positive or local law of that part of the realm.

By virtue of the principle of freedom thus established, the British parliament, sixty-one years after, on the 28th of August, 1833, passed the act for emancipating the slaves, and for abolishing slavery in the British West Indies, to take effect August 1, 1834, the time seemingly having arrived when the measure was practicable and expedient. This was in obedience to the Common Law no less than a duty to humanity, not an act of absolute national sovereignty, nor a grant from the crown, but as a right of the people, under the British Constitution. The British nation paid the holders of the 770,280 slaves £20,000,000, or about $123, on an average, for each slave, not as a claim of justice to them, but rather as a matter of propriety and of benevolence.

Sommersett was a slave, according to the American laws, and a fugitive from service; but he had the benefit of the *habeas corpus*, and was supported in the right of being a free man, in England, by the power of the British nation.

The *principle* of the common law upon which this right to freedom is founded, was established in England, by the highest court in the kingdom, as a part of the British Constitution. The right to all its benefits is the birthright of every person in England, and was so declared in 1772. This decision did not create the right, but merely declared it. The right itself existed before as the birth-right of every British subject, and is the right of human nature. The

principle has never been set aside nor questioned, and is supported by the virtue, the intelligence, and the patriotism of the nation, and is a principle of government, and the foundation of personal rights, wherever the Common Law prevails, that is, throughout the British Empire, and no more there than throughout the United States of America.

The *actual* existence of slavery, and the restraint upon personal freedom incident to it, in the British Empire, and in the United States also, are merely *suffered* or *tolerated* temporarily from necessity, or supposed necessity, subject for the time being to the local law within the local jurisdiction; while it is the purpose and aim of government, and the aspiration of the people, to establish the *principle* of freedom as a *reality* to be equally enjoyed by every person, and thus to make the Common and the local law one and the same thing.

The principle of freedom, as a part of the Common Law, forbids the enactment of any law which can introduce or establish slavery, or can interfere, except from necessity, and for a limited time only, with emancipation, or can unnecessarily continue slavery where it exists, in any part of the two empires. All annexations or accessions of territory to these empires, retain the local laws and local usages only for a time, but always subject to the disposal of the new sovereignty, and come in and form parts, only as subject to, and under the jurisdiction of, this principle of the Common Law. The continuance or sufferance of slavery is a matter, not of right in itself, nor constitutionally approved of, but of necessity, of acknowledged, and, for a time, of unremovable wrong, and possibly, perhaps, sometimes of temporary humanity even, in some localities where it may exist; but the very continuance of it constantly imposes an increasing and most solemn duty upon the people and upon the governments, to provide for the *actual* abolition of it as soon as that can be safely done; and also the duty of doing what can be done to prepare for such emancipation and for universal freedom.

The positive or local law holds, till the courts, having jurisdiction over it, or the governments having sovereignty over it, shall officially, in obedience to the principle of the Common Law which they are both always bound to endeavor to make a *reality*, declare a change in the local law relating to slavery, or totally abolish the institution.

The Common Law is, as it were, divine wisdom *educed* under Providence by mankind from their varied and successive experiences, in which the light of Truth becomes more and more clear, and is felt to be more precious and more obligatory, and in which Providence seems more benignant to the human race, by the attainment of more just principles of action between man and man; while the municipal or local law, and the forms and provisions of local jurisdiction, intended to carry out these principles and make them enjoyed by all, are merely the best *known* modes or means of effecting it for the *time* being; these modes or means being intended only for a temporary service, to be modified, changed or repealed when seen to operate harmfully, and when better are seen and demanded by society and the interests of humanity, with a view not to violate these principles but solely to secure the benefits of them. Underlying all laws and all forms of government is the *principle* itself of eternal and absolute right which the collective mind of man is seeking after by reflection, trial and experience. There is no real or absolute *finality* in forms; it belongs to principles and truths only which have a fixed and everlasting basis. It is by improving upon the past that reform in civil administration and government can be made. If there could be no change, no reform could be made in the world—no advance, no improvement. Otherwise the degree of liberty now enjoyed in Great Britain and in the United States could never have been attained. Otherwise we should have been thrust back and doomed to suffer the thraldom of the dark ages, and even that of savage life. "The *letter*" of the law, if made a "*finality*" *and perpetual*, "*killeth, but the spirit giveth life.*"

This is the beauty and glory of the Common Law, that it seeks and encourages, authorizes and provides for the improvement of the rules regulating the relations of man with man, and the adoption of better rules, and is never satisfied except with the attainment of the best possible. The Civil or Roman Law, though it grew up in republican as well as in imperial Rome, was shaped according to the genius of the Roman people, which was for conquest and aggrandizement; it contemplated the state rather than the individuals composing the state; it made men subordinate to the state; it gave them *republican* and equal rights only to clothe the state with despotic and imperial powers, and to make Rome "the mistress of the world;" individuals were comparatively nothing, the state was every thing; a few rights were given to the people—only enough to decoy them into a military and conquering despotism. But the Common Law has special regard to the individual as a member of society; it seeks to protect and to elevate him; it is *republican* in its nature, and concedes power to the state for the purpose in the end of exalting the individual; it has, in modern times, especially in England and in the United States, established *principles* of right and rules of law adapted to the well being of man, and these are presumed to be according to the best conceptions of the best minds. It seeks to make the great principles of absolute right the foundation of all laws, and to make them operate for, and secure the happiness of the people, and of every one of the people. It seeks more and still more light for its guidance in order to remove what is unequal and oppressive, to make changes when seen to be improvements, and to control all things for the good of man as an individual. Its conquest is in subduing wrong; its dominion is love; its progress is in the empire of right principles among men; it is an emanation from the source of all light, the inspiration of the Almighty, "which giveth us understanding." This seems to have been the idea of Hooker when he said, "Of Law there can

be no less acknowledged, than that her seat is the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power; both angels and men, and creatures of what condition soever, though each in different sort and manner, yet all, with uniform consent, admiring her as the mother of their peace and joy."—(*Ecclesiastical Polity, B. I.*)

It thus appears that by the decision of the King's Bench, in 1772, the correctness of which has never been called in question, *actual* slavery was abolished in England; and the *principle* of freedom, as opposed to slavery, was established as a part of the Common Law, and of the British Constitution, extending over the then British dominions, and also over all regions that might afterwards be annexed to the British Empire; the *actual* carrying out of this principle to make it a part of the *local* law, being left to Parliament, and to the local legislation and judicial decisions within the limits of their respective jurisdictions. England altogether *disowns* and refuses, aid to masters for detaining and securing slaves as property, and declares all men without distinction of color or race, free, and interposes to make them free, when, in the opinion of the government and of the people, it is expedient and wise so to interpose in any part of the British dominions. In England "a man's rights to his life, person and property, are perfect," in the eye of Law.

The American Revolution commenced soon *after* the decision of Lord Mansfield, when the people of the British Colonies were under the royal government of Great Britain, and were entitled to all the provisions, rights and principles of the Common Law.

At first, and till the Declaration of Independence, the Colonists were willing to continue their connection with Great Britain and their allegiance to the king; but they invariably insisted upon security for their chartered and constitutional rights. Yet he was faithless to them by endorsing,

and by attempting to enforce, the act of parliament for taxing America to any extent, without representation, for the purpose of revenue. This act was contrary to the rights of Englishmen living in England. He thus made himself a *party* to the oppression which was contrary to the rights of the people under the British Constitution. This taxation to any extent in fact involved, or drew after it the invasion of all civil rights. Hence the Revolution for the preservation of these rights. The controversy with the king of Great Britain thus became one purely of national sovereignty. The Colonists said they would have a sovereign of their own, with their rights and liberties secured to them. After eight years' fighting, he yielded to them their Independence, and acknowledged their sovereignty among the nations of the earth.

Our fathers, when they refused to continue their allegiance to the king, still acknowledged the binding authority of *sovereignty itself* as distinct from the king who had been entrusted with it, and had been faithless in the trust by encroaching upon their chartered rights. They never thought of repudiating sovereignty. They merely transferred sovereignty from the British king, who had abused the trust, to the American Congress, which they intended to look after and keep faithful.

Government in America is a *popular* or *republican* government. The people are the *source* of power, and in this respect are called the SOVEREIGN people. All authority belonging to Government, both National and State, is derived from power delegated by the people, and is limited to the amount of power thus delegated. All beyond these limits is usurped and despotic.

We have a national sovereignty, by which the United States is one of the nations of the earth; but this sovereignty, in order to preserve the nation, must, in extraordinary emergencies, as in time of war, exercise, and justly too, extraordinary powers. In such cases, if need be, it commands

the whole resources of all the people, both personal and physical; but, even then, the proportion of burden and sacrifice must be made as *equal* as possible. If property or men be taken, payment must be made by the nation for the common defence. To see that the people are the source of civil or political power in the United States we have only to trace the history of our government back to its origin at the time of the Revolution, when our fathers, having disowned any further allegiance to the king of England, set up and maintained a sovereignty or national government of their own.

Thus, the controversy becoming one purely of sovereignty, other civil matters remained the same as before, and constituted the *Platform*, to use an expression, now frequently employed, upon which our fathers started, and upon which all American Government, both National and State, is based. The rights of Englishmen living in England, were, from the first, claimed by the Colonists, as expressly retained by the people, and were so understood and *declared* by the delegates in Congress, within forty days after their first organization in 1774. These rights were never in controversy during the Revolution. They have never been surrendered to any power on earth. The delegates were charged with the duty of maintaining and defending them, and had no power over them but to defend them for their constituents. They had no power from the people to impair or abridge them, to bargain them away or to transfer them to any body of men whatever. Their only duty was to defend them, sink or swim, live or die, on the broad principles of the Common Law, and of human nature. Thus, our fathers based their rights on the Common Law and the British Constitution. But the Common Law and the British Constitution, as declared by Lord Mansfield in 1772, and enforced, as already stated, absolutely excluded and prohibited slavery. Also, these rights related to the regulation of internal affairs, to the security of justice between man and man, and to all the constituted judicial means of securing justice and promoting

the peace and happiness of society. These remained untouched by the Revolution. They belonged to Englishmen in England; they belonged to, and were retained and adopted by the Americans; and ever since that time the courts in America have constantly referred to opinions and usages in England for their guidance. Also, our fathers respected all grants before made by the sovereign power; such as the territorial limits of the Colonies, counties and towns and corporations, with all their rights, no less than the rights and liberties of individuals. All these, being under the new national sovereignty, were, of course, subject to adjustment and just regulation, and to a wise reform, in case ancient privileges and usages should be found to be obviously unjust, and hostile to the great principles of the Common Law and of republican justice. Before, they had been subject to the reasonable control of a royal sovereignty in England, but then and thereafter they were to be subject to the reasonable control of a republican sovereignty in America. Thus, while our fathers were wisely conservative of whatever was good and just, proper and wise, there was, underlying the whole structure of our government, the right to reform, to improve, and to perfect the system. "It is too clear," says Judge Marshall, in his opinion on the Dartmouth College question, "to require the support of argument, that all contracts and rights respecting property, remained unchanged by the Revolution."

Our fathers retained all that was wise and useful in the arts, in science, in literature, in religion; it would have been barbarism to have done otherwise; they retained the privilege of gathering wisdom from the past, and from other nations,—those storehouses for the common benefit of the human race throughout the world,—and of being an example, if so it might be, to other people.

The Colonial Charters were granted by the king or sovereign,—in whom in a legal sense the fee of the soil was invested,—to the settlers in the American wilderness, and

contained certain rights and immunities. The Colonies owed allegiance to the king as their sovereign, and were never under the Parliament. They could make laws for the management of their internal affairs,—not contrary to the laws and statutes of England. For about ten years before 1774, Parliament had by various acts usurped an authority which did not belong to it, and passed laws subversive of these chartered rights. The king, by approving of these laws, made himself a *party to the usurpation*. The Colonists remonstrated in vain. To tax the Colonies to any extent for the sake of revenue, without their consent, was an act of *absolute sovereignty* or despotism, such as might have been expected of the Roman Republic over her colonies, or of governments in the dark ages. The full exercise of this right or power, if fully carried out, necessarily led to injustice and oppression, equivalent to personal slavery; and was called by our fathers "slavery;" for what can remain to a people, of value to *life* or *liberty*, when impositions or taxes to any extent may be arbitrarily levied on their earnings or on their property? Here was a violation of their charters which our fathers resisted when the king attempted to enforce it. On their part it was a war in defence of their rights against a sovereign who tried to wrest them by force from his subjects to whom he had given them.

The rights granted by the charters are very similar in the several Colonies. Even in the first charter from King James, granted to two companies to plant colonies in Virginia, and dated April 10, 1606, is this clause: "Also we do for us, our heirs and successors, declare, by these presents, that all and every the persons, being our subjects, which shall dwell and inhabit within every or any of the said several colonies and plantations, and every of their children, which shall happen to be born within any of the limits and precincts of the said several colonies and plantations, shall have and enjoy all *liberties*, *franchises*, and *immunities*, within any of our *other* dominions, to all intents and purposes, *as if they had been*

abiding and born within our realm of England or any other of our said dominions." When the new charter was granted to Massachusetts by William and Mary, in 1692, the agents for that colony, after consulting the most judicious civilians and politicians, drew up a statement of the reasons for their acceptance of it, in which they say, "The colony is now made a province; and the General Court has, with the king's approbation, as much power in New England, as the king and Parliament have in England. They have all *English privileges* and *liberties*, and can be touched by *no law*, and by *no tax*, but of their own making. All the liberties of their religion are forever secured."

After a series of acts by the British Parliament, to which the king by his *approval* made himself a *party*, in plain violation of the chartered rights, and in which he and they avowed their intention of persevering, *the people* of the several Colonies became alarmed, and were determined to maintain their rights. With these feelings and views the elections to the General Court were made, and persons were selected from the mass of the people, to represent the sentiment and determination of the whole community. The representatives were thus in fact clothed with full power to take such steps as seemed, in the emergency, best for securing their rights against royal encroachments.

In accordance with the wishes of the people of Massachusetts, the actual appointment of the Delegates to the First Congress was made by the Representatives of the General Court, at Salem, June 17, 1774; and the same day Governor Gage dissolved the General Court,—the last official act of a Royal Governor in connection with a legislative body in Massachusetts. In the other Colonies similar powers and instructions were given to the delegates. The first Continental Congress met at Philadelphia, September 5, 1774. There were present by their delegates, all the Colonies except Georgia. They unanimously chose Peyton Randolph of Virginia, for president.

Thirty-nine days after the first meeting of the Delegates,

"*Friday, October* 14, 1774, the Congress met according to adjournment, and resuming the consideration of the subject under debate, made the following DECLARATION and RESOLVES:

"Whereas, since the close of the last war, the British Parliament, claiming a power, of right, to bind the people of America by statutes in all cases whatsoever, hath, in some Acts, expressly imposed taxes on them, and, in others, under various pretences, but in fact for the purpose of raising a revenue, hath imposed rates and duties payable in these Colonies, established a Board of Commissioners, with unconstitutional powers, and extended the jurisdiction of courts of Admiralty, not only for collecting the said duties, but for the trial of causes merely arising within the body of a county.

"And whereas, in consequence of other statutes, judges, who before held only estates at will in their offices, have been made dependent on the crown alone for their salaries, and standing armies kept in times of peace: And whereas, it has lately been resolved in Parliament, that by force of a statute, made in the thirty-fifth year of the reign of King Henry the Eighth, Colonists may be transported to England, and tried there upon accusations for treason and misprisions or concealments of treasons committed in the Colonies, and by a late statute, such trials have been directed in cases therein mentioned.

"And whereas, in the last session of Parliament, three statutes were made, one entitled, 'An Act to discontinue, in such manner and for such time as are therein mentioned, the landing and discharging, lading or shipping of goods, wares, and merchandise, at the town and within the harbor of Boston, in the Province of Massachusetts Bay in North America;' another, entitled, 'An Act for the better regulating the government of the Province of Massachusetts Bay, in New England;' and another, entitled, 'An Act for the impartial administration of justice in the cases of persons questioned for any act done by them in the execution of the law, or for the suppression of riots and tumults in the Province of the Massachusetts Bay in New England;' and another statute was then made 'for making more effectual provisions for the government of the Province of Quebec, &c.' All which statutes are impolitic, unjust, and cruel, as well as unconstitutional, and most dangerous and destructive of American rights:

And whereas assemblies have been frequently dissolved, contrary to the rights of the people, when they attempted to deliberate on grievances; and their dutiful, humble, loyal, and reasonable petitions to the crown for redress, have been repeatedly treated with contempt by his Majesty's ministers of state.

"*The good people* of the several Colonies of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, New Castle, Kent and Sussex on Dela-

ware, Maryland, Virginia, North Carolina and South Carolina, justly alarmed at these arbitrary proceedings of Parliament and Administration, *have severally elected, constituted, and appointed deputies to meet, and sit in General Congress*, in the city of Philadelphia, in order to obtain such establishment, as that their religion, laws and rights may not be subverted: Whereupon the deputies so appointed being now assembled, in a full and free representation of these Colonies, taking into their most serious consideration the best means of attaining the ends aforesaid, do in the first place, as Englishmen, their ancestors, in like cases have usually done, for asserting and vindicating their rights and liberties, DECLARE,

"*That the inhabitants of the English Colonies in North America*, by the immutable Laws of Nature, the principles of the English Constitution, and the several Charters or compacts, have the following RIGHTS:

"*Resolved unanimously*, 1. That they are *entitled to life, liberty, and property;* and they have never ceded to any sovereign power whatever, a right to dispose of either without their consent.

"*Resolved unanimously*, 2. That our ancestors who first settled these Colonies, were, at the time of their emigration from the mother country, entitled to all the rights, liberties and immunities of free and natural born subjects, within the realm of England.

"*Resolved unanimously*, 3. That by such emigration they by no means forfeited, surrendered or lost any of those rights; but that they were, and their descendants now are, entitled to the exercise and enjoyment of all such of them as their local and other circumstances enable them to exercise and enjoy.

"*Resolved*, 4. That the foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council; and as the English Colonists are not represented, and from their local and other circumstances, cannot properly be represented in the British Parliament, they are entitled to a free and exclusive power of legislation in their several Provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity, subject only to the negative of their Sovereign, in such manner as has been heretofore used and accustomed: But from the necessity of the case, and a regard to the mutual interest of both countries, we cheerfully consent to the operation of such Acts of the British Parliament as are, *bona fide*, restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefits of its respective members; excluding every idea of taxation, internal or external, for raising a revenue on the subjects in America, without their consent.

"*Resolved unanimously*, 5. That the respective Colonies are entitled to the COMMON LAW OF ENGLAND, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law.

"*Resolved*, 6. That they are entitled to the benefit of such of the English statutes, as existed at the time of their colonization; and which they have, by experience, respectively found to be applicable to their several local and other circumstances.

"*Resolved unanimously*, 7. That these, his Majesty's Colonies, are likewise entitled to all the immunities and privileges granted and confirmed to them by Royal Charters, or secured by their several codes of Provincial laws.

"*Resolved unanimously*, 8. That they have a right peaceably to assemble, consider their grievances, and petition the king; and that all prosecutions, prohibitory proclamations and commitments for the same are illegal.

"*Resolved unanimously*, 9. That the keeping of a standing army in these Colonies, in times of peace, without the consent of the legislature of that Colony in which such army is kept, is against law.

"*Resolved unanimously*, 10. It is indispensably necessary to good government, and rendered essential by the English Constitution, that the constituent branches of the legislature be independent of each other; that therefore the exercise of legislative power in several Colonies, by a council appointed, during pleasure, by the crown, is unconstitutional, dangerous, and destructive to the freedom of American legislation.

"All and each of which, the aforesaid deputies, in behalf of themselves and their *constituents*, do claim, demand, and insist on, as their indubitable rights and liberties; which cannot be legally taken from them, altered or abridged by any power whatever, without their own consent, by their representatives in their several Provincial legislatures.

"In the course of our inquiry, we find many infringements and violations of the foregoing rights, which, from an ardent desire that harmony and mutual intercourse of affection and interest may be restored, we pass over for the present, and proceed to state such Acts and measures as have been adopted since the last war, which demonstrate a system formed to enslave America.

"*Resolved unanimously*, That the following Acts of Parliament are infringements and violations of the rights of the Colonists; and that the repeal of them is essentially necessary, in order to restore harmony between Great Britain and the American Colonies, viz.:

"The several Acts of 4 Geo. III, ch. 15 and ch. 34; 5 Geo. III, ch. 25; 6 Geo. III, ch. 52; 7 Geo. III, ch. 41 and ch. 46; 8 Geo. III, ch. 22, which impose duties for the purpose of raising a revenue in America, extend the power of the Admiralty courts beyond their ancient limits, deprive the American subject of trial by jury, authorize the judge's certificate to indemnify the prosecutor from damages, that he might otherwise be liable to, requiring oppressive security from a claimant of ships and goods seized, before he shall be allowed to defend his property, and are subversive of American rights.

"Also, 12 Geo. III, ch. 24, entitled, 'An Act for the better securing his Majesty's dock yards, magazines, ships, ammunition, and stores,' which declares a new offence in America, and deprives the American subject of a constitutional trial by jury of the vicinage, by authorizing the trial of any person, charged with the committing any offence described in the said Act, out of the realm, to be indicted and tried for the same in any shire or county within the realm.

"Also, the three Acts passed in the last session of Parliament, for stopping the Port and blocking up the Harbor of Boston, for altering the Charter and government of Massachusetts Bay, and that which is entitled, 'An Act for the better administration of justice, &c.'

"Also, the Act passed in the same session for establishing the Roman Catholic religion in the Province of Quebec, abolishing the equitable system of English laws, erecting a tyranny there, to the great danger, (from so total a dissimilarity of religion, law and government) of the neighboring British Colonies, by the assistance of whose blood and treasure the said country was conquered from France.

"Also, the Act passed in the same session, for the better providing suitable quarters for officers and soldiers in his Majesty's service, in North America.

"Also, that the keeping a standing army in several of these Colonies, in time of peace, without the consent of the Legislature of that Colony, in which such army is kept, is against law.

"To these grievous Acts and measures, Americans cannot submit, but in hopes their fellow subjects in Great Britain will, on a revision of them, restore us to that state, in which both countries found happiness and prosperity, we have for the present only resolved to pursue the following peaceable measures: 1. To enter into a non-importation, non-consumption, and non-exportation agreement or association. 2. To prepare an address to the people of Great Britain, and a memorial to the inhabitants of British America; and 3. To prepare a loyal address to his Majesty, agreeable to resolutions already entered into."—(*Journals of Congress.*)

By this extract it appears, 1. That the Delegates who composed the First Continental Congress were appointed by the *people* of the Colonies; and that they recognized the people as the *only source* of the power or authority delegated to them in Congress.

2. The grievances complained of by the Colonists arose from the violation of their chartered rights by the King and Parliament; and the object of appointing this Congress was to obtain a redress of these grievances.

3. Congress, thus constituted and commissioned by the people, was charged with the duty of securing to them the continued enjoyment of their chartered rights, and especially against the encroachments of the royal government.

4. Congress declared such rights, as belonged to British subjects living in England at that time, to belong equally to the people of the Colonies in America; among which they specify those of the *Common Law*, with all the benefits to be derived from the principle of *freedom* established two years before by Lord Mansfield, as a part of the Common Law and of the Constitution of England. The whole people, without distinction of color or race, as decided by Lord Mansfield, "*are entitled to life, liberty and property;*" and they have never ceded to any sovereign power whatever a right to dispose of *either* without their consent. Congress did not, then, deny that the disposal of these rights belonged to the people; but, as will appear from the Declaration of Independence, it at length declared them "*unalienable,*" that is, incapable of being parted with by the people themselves.

5. Congress was not intrusted by the people with any power or authority to impair the force or value either of the rights of the Common Law enjoyed by the people of England, or of those of sovereignty, as defined and limited in England, but it was intrusted with full power only to secure to the people the enjoyment of them all. It was not only without any authority to infringe on these rights, or even to neglect the securing of them, but it was enjoined on Congress as a positive duty, to maintain and secure them as the great and only purpose and end of its commission and trust; and this charge was to be carried out in the best way for securing these rights as the great and sole object of this delegation of power,—rights, which comprehend all the principles and benefits of the Common Law, and deny and exclude all support whatever to slavery in America, of any color or race.

Seven days after the Declaration of the Rights of the Colonists was made by the American Congress, that is, on the 21st of October, 1774, it voted an Address to the People of Great Britain, written by John Jay, in which are expressed the same rights, as follows:

"In almost every age, in repeated conflicts, in long and bloody wars, as well civil as foreign, against many and powerful nations, against the open assaults of enemies, and the more dangerous treachery of friends, have the inhabitants of your island, your great and glorious ancestors, maintained their independence, and transmitted *the rights of men, and the blessings of liberty* to you, their posterity.

"Be not surprised, therefore, that we, who are descended from the same common ancestors; that we, whose forefathers *participated in all the rights*, the *liberties*, and the CONSTITUTION, you so justly boast of, and who have carefully conveyed the same fair inheritance to us, guaranteed by the plighted faith of government and the most solemn compacts with British sovereigns, should refuse to surrender them to men, who found their claims on no *principles of reason*, and who prosecute them with a design, that by having *our* lives and property in their power, they may with the greatest facility enslave *you*."

"Know, then, that we consider ourselves, and do insist, that we *are and ought to be as free as our fellow subjects in Britain*, and that no power on earth has a right to take our property from us without our consent.

"That we CLAIM ALL THE BENEFITS SECURED TO THE SUBJECT BY THE ENGLISH CONSTITUTION, and particularly that inestimable one of trial by jury."

"The Parliament assert that they have a right to bind us in all cases, without exception, whether we consent or not; that they may take and use our property when and in what manner they please, &c."

"Such declarations we consider heresies in English politics."

"We believe there is yet much virtue, much justice, and much public spirit in the British nation. To that justice we now appeal. You have been told that we are seditious, impatient of government, and desirous of independency. Be assured that these are not facts, but calumnies. Permit us to be *as free as yourselves*, and we shall ever esteem a union with you, to be our greatest glory and our greatest happiness; we shall ever be ready to contribute all in our power to the welfare of the empire; we shall consider your enemies as our enemies, and your interest as our own.

"But, if you are determined that your ministers shall wantonly sport with the *rights of mankind*—if neither the voice of justice, the dictates of the law, THE PRINCIPLES OF THE CONSTITUTION, or the suggestions of humanity, can restrain your hands from shedding human blood in such an

impious cause, we must then tell you, that we will never submit to be hewers of wood, or drawers of water, for any ministry or nation in the world.

"Place us in the same situation that we were at the close of the last war, and our former harmony will be restored."—(*Journals of Congress.*)

Mr. Webster, in his speech at Syracuse, N. Y., May, 1851, thus spoke of the First Continental Congress, and particularly of that Address to the people of Great Britain:—

"But we go farther back, to '74; '74 is the great era in our history, the time of the meeting of the first Congress in Philadelphia.

"And those remarkable papers that distinguished that Congress, and especially that capital paper addressed to England by John Jay. There we see the great basis of that popular system which our fathers maintained through the Revolution, and which constitutes the *basis* of the present Constitution of the United States."

In the Address to the Inhabitants of the Province of Quebec, October 26, 1774, Congress spoke of

"The inestimable advantages of a free English Constitution of government, which it is the privilege of all English subjects to enjoy."

"Little did we imagine that any succeeding ministers would so audaciously and cruelly abuse the royal authority, as to withhold from you the fruition of the *irrevocable rights*, to which you were thus justly entitled."

"We only invite you" "to unite with us in one social compact, formed on the generous principles of *equal liberty*, and cemented by such an exchange of beneficial and endearing offices as to render it perpetual."

"Our Confederation, which has no other objects than the perfect security of the *natural and civil rights* of all the constituent members, according to their respective circumstances."—(*Journals of Congress.*)

And in the petition to the King, October 26, 1774, Congress said:—

"Had our Creator been pleased to give us existence in a land of slavery, the sense of our condition might have been mitigated by ignorance and habit. But, thanks to His adorable goodness, we were born the *heirs of freedom*, and ever enjoyed our right under the auspices of your royal ancestors, whose family was seated on the British throne, to rescue and secure a pious and gallant nation from the popery and despotism of a superstitious and inexorable tyrant. Your Majesty, we are confident, justly rejoices, that your title to the crown is thus founded on the title of your people to *liberty*; and, therefore, we doubt not but your royal wisdom must

approve the sensibility, that teaches your subjects anxiously to guard the blessing they received from Divine Providence, and thereby to prove the performance of that compact, which elevated the illustrious House of Brunswick to the imperial dignity it now possesses.

"The apprehension of being degraded into a state of servitude, from the preëminent rank of English freemen, while our minds retain the strongest love of liberty, and clearly foresee the miseries preparing for us and our posterity, excites emotions in our breasts, which, though we cannot describe, we should not wish to conceal. Feeling as men, and thinking as subjects in the manner we do, silence would be disloyalty. By giving this faithful information, we do all in our power to promote the great objects of your royal cares, the tranquillity of your government, and the welfare of your people."

"As your Majesty enjoys the signal distinction of reigning over freemen, we apprehend the language of freemen cannot be displeasing."

"We ask but for peace, liberty, and safety. We wish not a diminution of the prerogative, nor do we solicit the *grant of any new right in our favor.* Your royal authority over us, and our connection with Great Britain, we shall always carefully and zealously endeavor to support and maintain."—(*Id.*)

For the restoration and security of these rights and liberties, the most unlimited power, which the people were capable of delegating or transferring, was committed to those Delegates. Accordingly, the Congress of 1774 was regarded, by the people, as the great depositary of civil and political power over the whole extent of country represented, and was looked to, with the greatest deference and most submissive confidence, as the grand Directory of the nation. Congress was called upon for advice and direction, and as an instance of this, we will mention that, on the 6th of October, 1774, it received a letter by an express from the Committee of Correspondence, dated the 29th of September, in which they said that, as

"There is reason to apprehend that Boston is to be made and kept a garrisoned town;" and that "the inhabitants will be held as hostages for the submission of the country, they *apply* therefore to the Congress for *advice how to act;*—that, if Congress advise to quit the town, they obey,—it it be judged that by maintaining their ground, they can better serve the *public cause*, they will not shrink from hardship and danger; finally, that, as the late Acts of Parliament have made it impossible that there should be a due administration of justice, and all law must therefore be suspended,—

that, as the Governor has, by proclamation, prevented the meeting of the General Court, they therefore *request the advice* of the Congress."—(*Journals of Congress.*)

After the session was closed, on the 26th of October, the measures adopted by the First Continental Congress were approved of by the people of the Colonies; and at length, when the time arrived for choosing delegates to the Second Congress, which met at Philadelphia, May 10, 1775, the powers previously given were confirmed by the people, and more than three fourths of the First Congress were returned to the Second. In New Hampshire and Maryland the words now used, were "*full and ample power;*" in Rhode Island, "*to represent the* PEOPLE *of this Colony;*" in Massachusetts, New York, and Delaware, "*with full power;*" in Connecticut, "*authorized and empowered;*" in New Jersey and Pennsylvania, "*appointed;*" in Virginia, "*chosen*" "*by ballot, to represent this Colony in General Congress;*" in North Carolina, "*invested with such powers as may make any acts done by them, or any of them, or consent given in behalf of this Province, obligatory, in honor, upon every inhabitant thereof;*" and in South Carolina, "*with full power and authority.*" Three Delegates from Georgia were sent to the Second Continental Congress.

The threatening aspect of affairs was such as to compel the representatives of the people to organize for the common defence a *provisional* government in Massachusetts. Those representatives were careful at once to explain with clearness and deference the pressing necessity for the measure, and received the entire concurrence and approbation of Congress. "The *immediate* defence of the Province" justified them in exercising powers which, less than five months before, had been intrusted to the Delegates then in Congress at Philadelphia.

"Gov. Gage had issued writs for the holding of a General Assembly at Salem, on the fifth of October, (1774.)"

"The new members, to the number of ninety, meeting according to the

precept, and, neither the Governor nor any substitute attending, they resolved themselves into a Provincial Congress, and soon adjourned to Concord. They there chose Mr. Hancock President." "They adjourned to Cambridge; and, when reassembled, they appointed a Committee to draw up a plan for the *immediate* defence of the Province; resolved to enlist a number of the inhabitants, to be in readiness to turn out at a minute's warning; elected three general officers, &c."

"The same Congress, meeting again in November, resolved to get in readiness twelve thousand men, to act on any emergency; and that a fourth part of the militia should be enlisted as minute-men, and receive pay; appointed two additional general officers; and sent persons to New Hampshire, Rhode Island and Connecticut, to inform those Colonies of its measures, and to request their coöperation in making up an army of twenty thousand men."—(*Holmes's Annals of America*, II, pp. 191, 2.)

"Province of Massachusetts Bay, in Provincial Congress, Cambridge, December 5, 1774.

"*Resolved*, That the proceedings of the American Continental Congress, held at Philadelphia on the 5th of September last, and reported by the honorable delegates from this Colony, have, with the deliberation due to their high importance, been considered by us; and the *American Bill of Rights* [see Rights of the Colonies pp. 13–16] therein contained, appears to be formed with the greatest ability and judgment, to be founded on *the immutable laws of nature and reason, the principles of the British Constitution, and respective Charters and Constitutions of the Colonies*, and to be worthy of their most vigorous support, as *essentially necessary to liberty;* likewise the ruinous and iniquitous measures, which, in violation of these rights, at present convulse and threaten destruction to America, appear to be clearly pointed out, and judicious plans adopted for defeating them."—(*Journals of Congress.*)

In the same resolve they appointed John Adams, Samuel Adams, Thomas Cushing, and Robert Treat Paine, members of the First, together with John Hancock, to be the delegation from Massachusetts, "*with full power*," to the Second Continental Congress.

"On the 20th of March, 1775, the Convention of Delegates from the several counties and corporations of Virginia," "proceeded, in the first place, to express their unqualified approbation of the measures of Congress, and to declare that they considered 'this whole Continent as under the highest obligations to that respectable body, for the wisdom of their counsels, and their unremitted endeavors to *maintain and preserve the just rights and liberties* of his Majesty's dutiful and loyal subjects in America.'"—(*Wirt's Life of P. Henry*, p. 114, 115.)

Mr. Jefferson (*Writings*, Vol. I, p. 8,) says, "the splendid proceedings of that Congress, at their first session, belong to general history, are known to every one, and need not therefore be noted here."

Affairs had now assumed a more serious aspect in the Colonies. On the 19th of April, 1775, British troops had been sent out to destroy the military stores of the Colonists at Concord, where, and at Lexington, American blood was shed.

May 5, 1775, the Provincial Congress of Massachusetts resolved that Gen. Gage "had disqualified himself from serving the Colony as Governor, or in any other capacity; and that, therefore, no obedience was in future due to him."

June 12, Governor Gage offered pardon to all except Samuel Adams and John Hancock.

The Provincial Congress of Massachusetts, in view of what seemed "*indispensably necessary*," and "*precluding the possibility of waiting for the direction of the Continental Congress*," had "passed an unanimous resolve for thirteen thousand six hundred men, to be forthwith raised by this Colony; and had also made proposals to the Congress of New Hampshire, and the governments of Rhode Island and Connecticut Colonies, for furnishing men in the same proportion," —of which the Continental Congress was officially informed, on the 11th of May, 1775, in a letter addressed to that body by Dr. Joseph Warren, President of the Provincial Congress. That letter commenced as follows:—

"In Provincial Congress, Watertown, May 3, 1775.

"To the Honorable American Continental Congress, to be convened at Philadelphia, on the 10th of May instant:

"*May it please your Honors*,

"The Congress of this Colony, impressed with the deepest concern for their *country*, under the present critical and alarming state of affairs, beg leave, with the *utmost submission*, whilst acting in support of the cause of *America*, to *request the direction* and assistance of your respectable assembly, &c."—(*Journals of Congress.*)

Again, on the 2d of June, Congress received another letter from the Massachusetts Convention, dated the 16th of May, requesting its

"Most explicit advice, respecting the taking up and exercising the powers of civil government," and declaring their readiness to "submit to such a general plan as the Congress may direct for the Colonies, or make it their great study to establish such a form of government there, as shall not only promote their advantage, but the Union and interest of all America."—(*Journals of Congress.*)

The next day this letter was referred to a Committee of five.

"June 9. The Report of the Committee on the Letter from the Convention of Massachusetts Bay, being again read, the Congress came to the following resolution:—

"*Resolved*, That no obedience being due to the Act of Parliament for altering the charter of the Colony of the Massachusetts Bay, nor to a Governor, or a Lieutenant-Governor, who will not observe the directions of, but endeavors to subvert that Charter, the Governor and Lieutenant-Governor of that Colony are to be considered as absent, and their offices vacant; and as there is no council there, and the inconveniences, arising from the suspension of the powers of government, are intolerable, especially at a time when Gen. Gage hath actually levied war, and is carrying on hostilities against his Majesty's peaceable and loyal subjects of that Colony; that, in order to conform, as near as may be, to the spirit and substance of the Charter, it be recommended to the Provincial Convention, to write letters to the inhabitants of the several places, which are entitled to representation in Assembly, requesting them to choose such representatives, and that the Assembly, when chosen, do elect councillors; and that such Assembly, or Council, exercise the powers of government until a Governor of his Majesty's appointment will consent to govern the Colony according to the Charter."—(*Id.*)

This resolve shows that Congress considered itself as possessed of powers to direct the people of Massachusetts in the existing emergency upon which its direction was respectfully requested. It did not stop here. On the 14th of June, 1775, Congress

"*Resolved*, That six companies of expert riflemen be immediately raised in Pennsylvania, two in Maryland, and two in Virginia."

"That each company, as soon as completed, march and join the army near Boston, to be there employed as light infantry, under the command of the chief officer in that army."

"That the form of the enlistment be in the following words:—

"I, have this day voluntarily enlisted myself, as a soldier, in the American Continental Army, for one year, unless sooner discharged."—(*Id.*)

Upon motion a committee was appointed to prepare rules and regulations for the government of the army.

The next day, June 15,

"The Report of the Committee being read and considered, *Resolved*, That a General be appointed to command all the Continental forces, raised, and to be raised, for the defence of AMERICAN LIBERTY."

"The Congress then proceeded to the choice of a General, by ballot, and GEORGE WASHINGTON, ESQ. was unanimously elected."—(*Id.*)

The next day the President informed Col. Washington of the unanimous choice of him to be General and Commander-in-Chief of the American forces, and on the 17th,—a day memorable for the battle on Bunker hill,—the commission was delivered to the General; and Congress on the same day

"*Resolved unanimously*, Whereas, the delegates of all the Colonies, from Nova Scotia to Georgia, in Congress assembled, have unanimously chosen George Washington, Esq., to be General and Commander-in-Chief of all such forces as are, or shall be, raised for the *maintenance and preservation of American liberty*; this Congress doth now declare that they will maintain and assist him, and adhere to him, the said George Washington, with their lives and fortunes in the same cause."—(*Id.*)

On the 20th of June, Congress directed General Washington

"To use his best circumspection" for "making it his special care in discharge of the great trust committed unto him, that the *liberties of America suffer no detriment*."—(*Id.*)

This appointment of a Commander-in-Chief was an act of national sovereignty, the propriety of which has never been questioned. The delegates were fully authorized and empowered by the people to use means such as they deemed best, for the preservation, maintenance and security of the liberties which were their birthright. These liberties Congress had charge of by a commission from the people. They are here expressed by the term in the singular number, of *American liberty*, including such liberties as were guaranteed to the people in England, and especially all the rights and benefits of the Common Law, which furnishes no support

whatever to African slavery, but at most tolerates it as an institution to be rightfully abolished, and which it is the bounden duty of Congress, in obedience to the Common Law, to abolish, the moment the exigency of necessity, or of seeming necessity for its continuance, ceases to exist. It was the order of the sovereign people, and the charge and duty of Congress, not to establish nor actively to sustain slavery, but, on the contrary, to abolish it, or at most merely to tolerate it.

As a further evidence of deference and acknowledgment of subordination to Congress, on the 26th of June the Provincial Congress of Massachusetts appointed a Committee of three to meet General Washington on his arrival in the Province, and on the first of July ordered an address to him, in which they said:

"We beg leave to assure you, that this Congress will, at all times, be ready to attend to any requisitions you may have occasion to make upon us; and to contribute all the aid in our power, to *the cause of America*, and your happiness and ease in the discharge of your exalted office."—(*Journals of the Provincial Congress of Massachusetts.*)

Washington arrived at Springfield on the 2d of July, and the next day at Cambridge, when he immediately took the command of the Provincial troops there collected under General Ward; and then was shown the subordination of the authority of the Colony to that of the Continental Congress by the ready surrender of Commissions under the Colony for those under Congress; and as cheerful obedience was given to the latter, as there had been to the former. General Ward was chosen the first Major General in the Continental service, on the same day that Washington received his commission as Commander-in-Chief. Washington was received with a respect and a deference, due alike to his personal character, to his official station, and to the high authority of those who appointed him. Some ten thousand British troops held possession of Boston till they left on the 17th of March following.

June 22, Congress authorized the emission of bills of credit to the amount of two millions of Spanish milled dollars, "for the *defence of America*," and pledged the "Confederated" or United Colonies for the redemption of the same.

On the 6th of July there was agreed to,

"*A Declaration by the Representatives of the United Colonies of North America now met in Congress at Philadelphia, setting forth the causes and necessity of taking up arms*;"—in which they say,

"We are reduced to the alternative of choosing an unconditional submission to the tyranny of irritated ministers, or resistance by force.—The latter is our choice.—We have counted the cost, and find nothing so dreadful as voluntary slavery. Honor, justice, and humanity, forbid us tamely to surrender that freedom which we received from our gallant ancestors, and which our innocent posterity have a right to receive from us. We cannot endure the infamy and guilt of resigning succeeding generations to that wretchedness which inevitably awaits them, if we basely entail hereditary bondage upon them.

"OUR CAUSE IS JUST. OUR UNION IS PERFECT."

"We most solemnly, before God and the world, declare, that, exerting the energy of those powers which our beneficent Creator hath graciously bestowed upon us, the arms we have been compelled by our enemies to assume, we will, in defiance of every hazard, with unabating firmness and perseverance, employ for the preservation of our liberties, being with one mind resolved to die freemen rather than to live slaves."

"In defence of the freedom that is our birth-right," "we have taken up arms. We shall lay them down when hostilities shall cease on the part of the aggressors, and all danger of their being renewed shall be removed, and not before."—(*Journals of Congress.*)

In these extracts the representatives or delegates then united in Congress, repeat the declaration of their authority as general, and comprehending the affairs of all the Colonies, and of the subordination of the Colonies to Congress. The people approved of this claim as right, and as authorized by themselves. Even as early as December 7, 1774, at a town meeting in Boston, a committee was appointed to bring in a list of proper persons to serve as a committee for carrying the Resolutions of the late Continental Congress, that of 1774, into execution. They reported a list of 63 persons, who were chosen. The "*liberties*"

of the people are also spoken of as the objects of defence in taking up arms,—liberties such as were before mentioned, as committed to the charge of Congress to defend, entire in every part, not excepting any of the rights and privileges of the Common Law.—(*Boston Town Records.*)

Early in 1776 an important crisis was obviously approaching. Many had anticipated a Declaration of Independence, and expressed their readiness for it. Congress carefully watched the expression of public sentiment in the Colonies, with a view to ascertain whether the people were ripe for this decisive step, so that it could be wisely taken and be sustained; and when Congress was satisfied, it exercised the authority reposed in it by making that Declaration. As a specimen of the popular sentiment, I will mention that the inhabitants of Brimfield, Massachusetts, who never afterwards held a town meeting in his Majesty's name, when assembled in town meeting, May 24, 1776, voted unanimously,

"That if the honorable Congress should, for the safety of the said Colonies, declare them independent of Great Britain, we, the said inhabitants, will solemnly engage with our lives and fortunes, to support them in the measure."

Previously to declaring Independence, Congress, on the 10th of May, 1776,

"*Resolved*, That it be recommended to the respective assemblies and conventions of the United Colonies, where no government sufficient to the exigencies of their affairs hath been hitherto established, to adopt such government as shall in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.

"*Resolved*, That a Committee of three be appointed to prepare a preamble to the foregoing resolution."

"May 15, 1776. Congress took into consideration the draught of the preamble brought in by the Committee, which was agreed to as follows:

"Whereas his Britannic Majesty, in conjunction with the Lords and Commons of Great Britain, has, by a late act of Parliament, *excluded the inhabitants* of the United Colonies from the protection of his crown; and whereas no answer whatever to the humble petitions of the Colonies for

redress of grievances and reconciliation with Great Britain, has been or is likely to be given; but the whole force of that kingdom, aided by foreign mercenaries, is to be exerted for the destruction *of the good people* of these Colonies; and whereas, it appears absolutely irreconcilable to reason and good conscience, *for the people* of these Colonies now to take the oaths and affirmations necessary for the support of any government under the crown of Great Britain, and it is necessary that the exercise of every kind of *authority under the said crown should be totally suppressed, and all powers of government exerted under the authority of the people* of the Colonies, for the preservation of internal peace, virtue and good order, as well as for the defence of their lives, liberties and properties, against the hostile invasions and cruel depredations of their enemies; therefore resolved, &c.

"*Ordered*, That the said preamble, with the resolution passed the 10th instant, be published."—(*Journals of Congress.*)

Thus Congress exercised the authority for suppressing obedience to the crown in all the Colonies,—which it had before, June 9, 1775, done conditionally in respect to the Colony of Massachusetts. (See p. 24.) Provisional governments in this and in other colonies had been before established with the advice or direction and approbation of Congress.

At length, when the state of things seemed to demand it, and when the people of the Colonies were "*ripe*" for it, as far as could be judged from the expression of opinion in various ways in all parts of the Colonies, the Delegates were at once decided, and unanimously made the Declaration of Independence of the United States of America, July 4, 1776.

In that Declaration by the Representatives of the United States of America, in Congress assembled, they say,

"We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain UNALIENABLE rights; that among these, are LIFE, LIBERTY, AND THE PURSUIT OF HAPPINESS. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such PRINCIPLES, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

The same principles are here declared as heretofore, by Congress. The rights of the people to "*life, liberty, and the pursuit of happiness*,"—the same before asserted by Congress to belong to the people of the Colonies equally with Englishmen living in England, and which were never in dispute in the controversy with Great Britain,—are now declared UNALIENABLE; that is, incapable of being parted with by the people themselves, or of being taken from them. They are the same rights as those declared October 14, 1774, and include the rights of the *Common Law* to all persons without distinction of color, as declared by Lord Mansfield in 1772, more than four years before, and which have never since been called in question, as a part of the Common Law and of the Constitution of England. Congress did not give the least hint that it ever presumed to have received any power or authority whatever to diminish or abridge these rights, or to deprive the people of the fullest possible advantages to be derived from them. In other words, it had no power over slavery, except to regulate it during the necessity of its temporary continuance, to mitigate its evils in the best way it could, and to shorten its duration, and to abolish it for ever, when it should seem wise to do so; but Congress, in 1776, confessed and declared, as it had often done before, that it was a duty it owed to the people, to provide for, and to secure the abolition of it, as its existence, unnecessarily and permanently continued, was incompatible with the great principles of rational and Constitutional freedom belonging to the people, which the Delegates in Congress confessed and declared themselves charged with the duty of maintaining and defending.

In order to show the views and sentiments of Congress relating to slavery, I will here add the following resolve, April 6, 1776:

"*Resolved*, That no slaves be imported into any of the Thirteen Colonies."—(*Journals of Congress.*)

The appointment of Gen. Washington in 1775, as Commander-in-Chief of the forces raised and to be raised for the maintenance of American Liberty, the authoritative instructions, May 15, 1776, "that the exercise of every kind of authority under the said crown should be totally suppressed," &c., and the Declaration of Independence, were general, that is, were to operate equally in all parts of the country, and with sovereign control over all existing authorities, and, as such, were some of the highest acts of national sovereignty. These acts, as well as others of a like general and controlling character, were at that time fully approved of, and cheerfully submitted to. In fact, the purpose, the acts and the results to this time, taken as a whole, and in their relations to each other, show not only the exercise of a national sovereignty, but a moderation and an appropriateness in the measures which excited general admiration. Before, reconciliation was possible upon the security of the Chartered rights. Now, Independence was to be viewed as in controversy with Great Britain, till it was acknowledged in 1783, when it was established.

The immediate object of the Declaration of Independence, was to declare to the world, that the allegiance of the people of the Thirteen American Colonies to the crown of Great Britain, was dissolved, and that, under the title of the UNITED STATES OF AMERICA, they hereafter claimed to be one of the nations of the earth. The reasons for taking this course are stated, in order to justify the Colonists to the world and to posterity. At the same time Congress declares to the people of the United States the *principles* upon which this new national government was founded, and by which it is to be regulated, and the rights and privileges which are to be secured to all who may live under it, in all future time,—a government ever to be devoted to Freedom, and never to be made the agent or servant of slavery.

The people in approving of this declaration thus made in accordance with the powers delegated by them to Congress, at once saw that the die was cast; that the act could not be

recalled; that all reconciliation was cut off; and that Independence must be sustained, or they must be subdued by force, and remanded back to what they considered and called "*slavery.*"

In pursuance of this declaration Congress proceeded, as a national sovereignty, to pass such resolves as seemed most judicious in meeting the coming events. It continued to raise troops and to issue bills of credit on Continental account. It sent ambassadors to France and Holland, to awaken sympathy, and to obtain assistance, in the struggle to maintain their independent existence against England. It ratified a treaty with France in 1778; and at length, in 1783, it ratified a treaty of peace with Great Britain, which had been signed by its ambassadors at Paris. When the king signed it, he signed it as a treaty agreed upon, on our part, by those having authority from an American national sovereignty in the Congress which had commissioned these agents. And when he had signed it, which he did reluctantly, as he afterwards said to John Adams, the first American minister to London, he added, "I was the last to sign the treaty of peace with America, and I will be the last to break it."

These powers of national sovereignty, limited of course by the principles of freedom, thus exercised by Congress, were derived from the people, and by them delegated to that body. In the Declaration, July 4, Congress used the following language, than which nothing could be more explicit:

"We, therefore, the Representatives of the United States of America, in Congress assembled," "do, *in the name, and by* AUTHORITY *of the good people of these* Colonies, solemnly publish and declare," &c.

The delegates, of themselves, had no authority over others in civil matters. If there was no such authority belonging to Congress, as has been here maintained, then the Revolution was in vain, and the peace of 1783, and

the American Independence, also. But these powers were thus intrusted to the Continental Congress, and embraced all the departments of government. As Mr. Madison afterwards said, (*Federalist*, No. 38,) "Congress, a single body of men, are the depository of all the Federal powers." John Adams, in his Autobiography for October 1, 1776, said, "all the powers of government, legislative, executive, and judicial, were at that time collected in one centre, and that centre was the Congress."—(*Works*, Vol. III, p. 87.)

By virtue of the powers given by the people to the Delegates, annually renewed, implied in the very terms of their appointment, and confirmed by general consent, Congress had at its disposal all the functions, and was charged with all the duties, of a national government; first of all, to secure the rights of the people, and, after the Declaration, to maintain the Independence of the United States against all attempts of Great Britain to retain the sovereignty over them. And we find no complaint of an excessive use of power, but rather that power had not been exercised to the full extent it was conferred. Such was originally the extent of power delegated to Congress; *limited*, of course, like the sovereignty in England, by the unalienable rights of the people. Accordingly, Congress passed resolves for raising armies and for other general purposes, to carry on the war and to secure the National Independence. At length, however, by reason of the repeated concessions of power, Congress became controlled by the States in almost everything except what concerned the foreign relations of the country, so that a new *form* of administration was necessary. Peace was signed, and Independence established in 1783; and, in 1789, by the order and authority of Congress, with the consent of the people, a change only in the form of the administration was made, from that of the Confederation to that of the Constitution, with an uninterrupted continuance of the national sovereignty.

In a letter of General Washington to Joseph Jones, Delegate in Congress from Virginia, dated May 31, 1780, he said,

"We can no longer drudge on in the old way. By ill-timing the adoption of measures, by delays in the execution of them, or by unwarrantable jealousies, we incur enormous expenses, and derive no benefit from them." "We are always working up hill.

"This, my dear sir, is plain language to a member of Congress; but it is the language of truth and friendship. It is the result of long thinking, close application, and strict observation. I see one head gradually changing into thirteen. I see one army branching into thirteen," "and I am fearful of the consequences."—(*Washington's Writings*, Vol. VII.)

In his reply in June, Mr. Jones said,

"Congress have been gradually surrendering, or throwing upon the several States, the exercise of powers, which they should have claimed, and to their utmost have exercised themselves, till at length they have scarcely a power left, but such as concerns foreign nations; for, as to the army, Congress is at present little more than the medium through which the wants of the army are conveyed to the States."—(*Id.*)

Alexander Hamilton, in a letter to James Duane, a Delegate in Congress from New York, dated Sept. 3, 1780, said:

"The fundamental defect is a want of power in Congress. It is hardly worth while to show in what this consists, as it seems to be universally acknowledged; or to point out how it has happened, as the only question is how to remedy it. It may, however, be said, that it has originated from three causes: An excess of the spirit of liberty, which has made the particular States show a jealousy of all power not in their own hands; and this jealousy has led them to exercise the right of judging in the last resort of the measures recommended by Congress, and of acting according to their own opinions of their propriety, or necessity; a diffidence, in Congress, of their own powers, by which they have been timid and indecisive in their resolutions; constantly making concessions to the States, till they have scarcely left themselves the shadow of power; a want of sufficient means at their disposal to answer the public exigencies, and of vigor to draw forth those means; which have occasioned them to depend on the States individually, to fulfil their engagements with the army; the consequence of which has been, to ruin their influence and credit with the army, to establish its dependence on each State separately, rather than *on them*, that is, rather than on the whole collectively.

"It may be pleaded, that Congress had never any definite powers granted to them, and, of course, could exercise none, could do nothing more than

recommend. The manner in which Congress was appointed, would warrant, and the public good required, that they should have considered themselves as vested with full power *to preserve the republic from harm.* They have done many of the highest acts of sovereignty, which were always cheerfully submitted to: The declaration of independence; the declaration of war; the levying of an army; creating a navy; emitting money; making alliances with foreign powers; appointing a dictator, &c., &c. All these implications of a complete sovereignty were never disputed, and ought to have been a standard for the whole conduct of administration. Undefined powers are discretionary powers, limited only by the object for which they were given; in the present case, the independence and freedom of America." "I only mean to remark, not to censure."—(*Hamilton Papers*, Vol. I, pp. 428–30.

General Washington wrote to James Duane, Oct. 4, 1780,

"It also gives me pain to find, that the pernicious State system is still adhered to, by leaving the reduction and incorporation of the regiments to the particular States. This is one of the greatest evils of our affairs."—(*Washington's Writings*, Vol. VII.)

And on the 28th of February, 1781, to John P. Custis, of Virginia,

"We have brought a cause, which might have been happily terminated years ago by the adoption of proper measures, to the very verge of ruin."—(*Id.*)

Richard Henry Lee, of Virginia, wrote to some members of Congress, June 12, 1781:

"Let General Washington be immediately sent to Virginia, with two or three thousand good troops. Let Congress, as the Head of the Federal Union, in this crisis direct, that, until a Legislature can convene, and a governor be appointed, the General be possessed of dictatorial powers, and that it be strongly recommended to the Assembly, when convened, to continue those powers for six, eight, or ten months, as the case may be; and that the General may be desired, instantly on his arrival in Virginia, to summon the members of both Houses to meet where he shall appoint, to organize and resettle their government."—(*Id.*, Vol. VIII.)

In 1783, March 31, General Washington wrote to Alexander Hamilton:

"Dear Sir,—I have duly received your favors of the 17th and 24th. I rejoice most exceedingly that there is an end of our warfare, and that such

a field is opening to our view, as will, with wisdom to direct the cultivation of it, make us a great, a respectable, and a happy people; but it must be improved by other means than State politics, and unreasonable jealousies and prejudices."

"My wish to see the Union of these States established upon liberal and permanent principles, and inclination to contribute my mite in pointing out the defects of the present Constitution, are equally great."

"No man in the United States is or can be more deeply impressed with the necessity of a reform in our present Confederation than myself. No man perhaps has felt the bad effects of it more sensibly; for to the defects thereof, and want of power in Congress, may justly be ascribed the prolongation of the war, and consequently the expenses occasioned by it. More than half the perplexities I have experienced in the course of my command, and almost the whole of the difficulties and distress of the army, have had their origin here. But still, the prejudices of some, the designs of others, and the mere machinery of the majority, make address and management necessary, to give weight to opinions which are to combat the doctrines of these different classes of men in the field of politics."—(*Id.*)

In 1784, January 18, he wrote to Benjamin Harrison, governor of Virginia:

"The disinclination of the individual States to yield competent powers to Congress for the Federal Government, their unreasonable jealousy of that body and of one another, and the disposition, which seems to pervade each, of being all-wise and all-powerful within itself, will, if there is not a change in the system, be our downfall as a nation. This is as clear to me as A B C; and I think we have opposed Great Britain, and have arrived at the present state of peace and independency, to very little purpose, if we cannot conquer our own prejudices."—(*Id.*, Vol. IX.)

In 1786, May 18, he wrote to John Jay:

"I coincide perfectly in sentiment with you, my dear Sir, that there are errors in our National Government,* which call for correction; loudly I would add; but I shall find myself happily mistaken if the remedies are at hand. We are certainly in a delicate situation; but my fear is, that the people are not yet sufficiently *misled* to retract from error. To be plainer, I think there is more wickedness than ignorance mixed in our councils. Under this impression I scarcely know what opinion to entertain of a General Convention." "Yet something must be done, or the fabric must fall; for it is certainly tottering."—(*Id.*)

* It is obvious that General Washington regarded the original powers of Congress as "*National*," and controlling over the whole country.

To General Knox he wrote, December 26, 1786:

"I feel, my dear General Knox, infinitely more than I can express to you, for the disorders which have arisen in these States." "My mind can scarcely realize it as a thing in actual existence." "There are combustibles in every State to which a spark might set fire." "In regretting, which I have often done with the keenest sorrow, the death of our much lamented friend, General Greene [June 19, 1786], I have accompanied it of late with a query, whether he would not have preferred such an exit to the scenes which, it is more than probable, many of his compatriots may live to bemoan."—(*Washington's Writings*, Vol. VII.)

I have made these extracts, from persons entitled to the highest consideration for their views in relation to the public affairs after the war, for the purpose of showing the necessity of a change in the form of the government. Congress had before used the means in its power, and varied the form of the government, in such manner as seemed to some of its too influential members, best adapted to the great purposes of its institution. Congress exercised the authority, from the first intrusted to it by the people, by directing, under the Articles of Confederation, a Convention to be held for the purpose of revising the Constitution, not for the purpose of taking from or adding to the government any power or powers which were not originally delegated to that body, nor for abridging or impairing any of the rights or liberties belonging to the people, which were in the charge of Congress to defend. The idea of calling a Convention for the purpose of revising the Articles of the Confederation had been recommended both by distinguished individuals and by State Legislatures; and, accordingly, Wednesday, February 21, 1787, on motion of the Delegates from Massachusetts, Congress passed the following vote, namely:

"Whereas, there is provision in the Articles of Confederation and Perpetual Union, for making alterations therein, by the assent of a Congress of the United States, and of the legislatures of the several States; and whereas, experience hath evinced that there are defects in the present Confederation, as a mean to remedy which, several of the States, and particularly the State of New York, by express instructions to their Delegates in Congress, have suggested a Convention for the purposes expressed in the following

resolution; and such Convention appearing to be the most probable mean of establishing in these States a *firm National Government:*

"*Resolved*, That, in the opinion of Congress, it is expedient, that, on the second Monday in May next, a Convention of Delegates, who shall have been appointed by the several States, be held at Philadelphia, for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress, and the several legislatures, such alterations and provisions therein as shall, when agreed to in Congress, and confirmed by the States, render the Federal Constitution adequate to the exigencies of government, and the preservation of the Union."—(*Journals of Congress.*)

In this resolve it is expressly stated that there is *adequate provision* in the Articles of Confederation to make alterations therein. It was proper for Congress to take the incipient step for such alterations; and, accordingly, it ordered the Convention. In doing so, it only exercised a power expressly given to it; to say nothing about its authority implied in the national sovereignty vested in it by the people in 1774, and annually confirmed to it by them for fourteen successive years, and by virtue of which the Independence of the United States had been recognized by foreign nations, and established.

In the appointment of Washington as Commander-in-Chief in 1775, Congress exercised only a *part* of its sovereignty—that relating to the army, or rather that relating to the *command* of the army in defence of LIBERTY; and his commission was liable to be revoked at any time by Congress. Washington was at all times in subordination to Congress, as all his correspondence bears witness. Besides this, relating to the command of the army, the national sovereignty in Congress comprehended the financial, the civil, the foreign, in a word, all other departments of government,—in general, whatever was necessary to fulfil and sustain the great trust of maintaining and defending the liberties of the people. It made the Declaration of Independence, raised money on Continental account to carry on the war, and used other means to secure those rights. It sent agents abroad for various purposes, and, in 1783, ratified

the treaty of peace with Great Britain, which its authorized ambassadors had signed. The exercise of all these powers was necessary, in order to fulfil, and was implied in, the trust; which trust was committed to, and was accepted by, Congress. Of course Congress used its own discretion in the means for attaining the ends. The Delegates were appointed and clothed with adequate powers by the people, while they were all yet under the *royal* government. Immediately upon the organization of Congress, that body was looked up to by the people as the protector and guardian of their rights, and respected as an authority over the Colonies, and over all the people of the Colonies. As yet there was no civil organization as a government in the Colonies, distinct from that of the king, which the people had already rejected. Circumstances rendered some form of civil government necessary, and accordingly the people proceeded to form *provisional governments* in the Colonies for local purposes, of which they notified Congress, and received its approbation. The local governments, always *as under Congress*, took charge of local matters, which are embraced in the national sovereignty, and which could be better attended to by these governments, than directly by Congress itself. Instead of these temporary Colonial organizations, specially recommended or sanctioned by Congress, in 1775, the great and momentous change, produced by the Declaration of Independence, required more definite and deliberately organized governments. In anticipation of that change, the Resolve of the 10th May, 1776, (see p. 28,) gave warning and authority to the several Colonies, to form such governments with written Constitutions, in most of which was inserted a bill of rights of the people. The bills of rights in the State Constitutions, as far as they were in harmony with the common principles of the great trust of freedom, which Congress was charged to maintain and defend, constituted a bill of rights to the whole people of the United States.

Thus, the States grew up as the children of Congress, and,

from being intrusted with the privilege of taking a part in the local details of the great work of liberty and order in America, they at length seemed to consider themselves as the source of all power, each claiming to be, in the words of Washington, "all-wise and all-powerful within itself." In their view, State rights and State authority were above those of Congress, and absolute in America. They delayed responding to the calls of Congress, and failed to furnish their quota for supplying the most pressing wants of the nation. They forgot the national sovereignty which gave them birth, and which Congress had rightfully exercised in the early period of the Revolution without complaint from any quarter. They exercised powers which had been delegated to Congress, were essential to national sovereignty, and were necessary to the continued union of the people. Thus, after the war was closed, and danger from a foreign enemy ceased, there was the most imminent danger, from a want of State subordination, that the sacrifices during the conflict would prove to have been in vain, and anarchy would be the result of the contest to the people of all the States. The forbearance of Congress to exercise its proper, just, and full national sovereignty, had not destroyed or abridged that sovereignty, as still in that body; neither did the extreme difficulty of exercising it, impair its rightfulness or force; neither could Congress part with it or surrender it to the States or to any other body, nor annul or impair it; for it was a TRUST, committed to the perpetual keeping of Congress, through a succession of persons to be regularly chosen by the people to have charge of it and perform its high duties for a stated time, and then to commit it to a succeeding Congress,—a trust, from its nature, incapable of being surrendered to any State or body of men. At length, in 1787, Congress ordered the Federal Convention to devise a plan of government for the whole country, which, after being laid before all the people for their inspection and approbation, so that it might

receive their support, was ratified by Congress and ordered to be carried into effect. It was submitted to the people that they might understand its provisions and see the necessity of adopting and supporting it, when adopted and ratified by Congress, to which the people had before delegated full power as to the form of a government, consistent with the principles of American and republican liberty.

When the Articles of the Confederation were prepared and adopted as a form of administration, Congress could not surrender to the States, the creatures of its own hand, the sovereignty of the nation committed to it in trust, as to the *great principles* of Freedom upon which it was based. The sovereignty was still in Congress, which agreed to carry on the government according to this form or mode of administration, as the best that could then be obtained. This form was found to be defective and inadequate; and the great desideratum among patriots, after the war especially, was to discover one that would be adequate to, and fulfil, the purposes of the Revolution and of American Independence. It was not possible for Congress to surrender this sovereignty to the States in 1787, so that they could be *parties* to a mere Confederation, and as such, exercise the powers equal to those of a national sovereignty under the Constitution in 1789 and afterwards. The Constitution itself contradicts this idea, and says expressly in the first sentence, "We, THE PEOPLE OF THE UNITED STATES," &c. The sovereignty, with all the functions of government, legislative, judicial, executive, was in the hands of one body, the Continental Congress, from 1774 to 1789, when it died not, as State-Rights theorists maintain; but it continued in being, and passed in *trust* into the hands of those who were called to take charge of it according to the form or mode prescribed by the Constitution of the United States.

The Federal Convention was not called by the people: it could not have been called by them, without their exercising an authority they had already delegated to Congress.

This authority could not be in the hands of both at the same time. Congress alone could properly and rightfully call such a Convention, and clothe it with authority to revise the Confederation, and prepare a new Constitution, which, when prepared, would, with the general consent of the people, be binding on all, provided it secured their liberties, such as were expressed and reasonably implied from the first. The appointment of the Delegates to the first Congress conferred all necessary powers, whether expressed or not.

The Continental Congress consisted, as Mr. Madison said, of but "a single body of men," which was "the sole depository of all the Federal powers." It had exercised, though imperfectly, these powers in all the departments of government, legislative, judicial, and executive. Of course it must, according to its best discretion, distribute power and authority, and assign duties, to different persons, always keeping in view the great *principles of Freedom* it had in charge. A new form of administration, a new distribution of power into regular departments, was more generally felt to be absolutely necessary to secure and render permanent the civil and political rights and interests of the people. Accordingly, a change was made in the form of the administration, a change which seemed better adapted to secure the happiness of the people. This was done by means of the Constitution of the United States.

We hear of the *Union of the States*, an expression convenient in popular use. Such a union can be only a union upon certain articles of agreement between the *governments of States*, constituting a *Confederacy or Confederation*, but not a nation. We regret to have seen in the last Presidential Message this idea so prominent, as if the American Government was only a Confederacy or a Confederated Union of States; it involves the idea that in the United States, the national government at Washington is not derived from the people, though the first sentence of the Constitution says,

"WE, THE PEOPLE OF THE UNITED STATES," &c. It is the PEOPLE,—the only source of political power acknowledged in America. They formed the Union, and gave to their Delegates in Congress powers of national sovereignty, limited only by those rights called "*unalienable*," which are never to be infringed upon by Congress, but are to be maintained and defended by it for the benefit of the whole people, who, by their Delegates, ratified and established the Constitution.

The Union. By whom was it formed? By the people of the Colonies in their individual capacity, each on his own responsibility.

Had they a right to form a Union? They had; because the king, in attempting to enforce the acts of Parliament, which declared its right to tax America to any extent for the sake of revenue, without representation, had violated an essential condition on which was founded all allegiance. The Colonists, therefore, owing no further allegiance, had a perfect right to form a Union to suit themselves, so far as the king and the parliament were concerned.

For what purpose was the Union formed? It was to secure liberty, rational, regulated liberty,—the rights of the people,—the rights of human nature. *First*, as against royal and parliamentary encroachment. The king had invaded these rights, as secured by his charters to them, and the Parliament had declared its right to invade them to any extent. When acts are passed by government with the solemn formalities of legislation, they are serious matters, to be carried out, and are to be so regarded by the community. If wrong and unconstitutional, they are dangers always impending, and may, at any whim or caprice of the government, be enforced or attempted to be enforced, without any fault of the people. Such was the position of the Colonists. The British Parliament had passed such acts, and the king was making the utmost exertions to enforce them. To resist them, to maintain and secure their rights, the people formed

a Union. Here was the gist of the contest, and the real object of the war of the Revolution.

Secondly, to secure other rights,—rights which were in danger from a faithless sovereign. If the British claim was submitted to, other rights, and all rights, would have been at the arbitrary disposal of the king and parliament; and absolute slavery would have been ultimately the condition of the Colonies. To preserve their rights, Union was necessary under a sovereignty of their own. Such was the political Union of our fathers.

Our fathers, when oppressed by the tyranny of Great Britain which threatened to be perpetual, availing themselves of the right of self-government which the God of Nature bestowed upon them as human beings, formed a UNION, under which they brought to a successful close the war of the Revolution which made us a Nation. This was a a UNION OF THE PEOPLE, formed while they were yet under the Royal government of Great Britain,—a Union, by which ample powers were at first given, and were annually renewed, to their Delegates in Congress, to maintain and defend the rights and liberties of the people. This Union dates with the organization, in 1774, of the first Continental or American Congress. When the Delegates were appointed by the people, they were all under the *royal* government. The authority of Congress *preceded in the order of time* the establishment of every other legimate authority in America. When the people had *once* delegated such power to Congress, they could not delegate it AGAIN, for they had it NOT, to give. The people asked the advice of Congress, which directed them to form State Constitutions for the management of local matters. It is impossible but that all the States should be in subordination to Congress as the national sovereignty over them all.

By authority invested in it, Congress drew up the Articles of Confederation, which the several States ratified by their Delegates, the last in 1781; and, at length, seeing the imperfections

of these Articles as a *written* Constitution, February 21, 1787, it passed the resolve for calling a Convention to revise the Articles, in order to "render the Federal Constitution adequate to the exigencies of Government and the preservation of the Union,"—the Union, with the rights and liberties specified and declared as belonging to the people. Accordingly, the Convention met on the 14th of May, and, on the 17th of September following, reported the Constitution to Congress, which approved of the recommendation of the Federal Convention, that it "be submitted to a Convention of Delegates chosen in each State by the people thereof, under the recommendation of the Legislature, for their assent and ratification." The requisite number of States having "confirmed" or "ratified" the Constitution by the Delegates of the people in the State Conventions, Congress, on the 13th of September, 1788, resolved, "That the first Wednesday in January next [1789] be the day for appointing electors in the several States, which, before the said day, shall have ratified the said Constitution;" "that the first Wednesday in March next be the time, and the present seat (New York) of Congress the place, for commencing the proceedings under the said Constitution." On the 30th of April, GEORGE WASHINGTON, having been unanimously elected by the people, in a manner prescribed by the Constitution, took the oath of office as President of the United States, and, together with the Senators and Representatives elect, under the Constitution, became the successors to the Continental Congress, invested with the same powers of national sovereignty, and charged with the same solemn duties of providing for the security and defence of the rights of the people.

I see no authority for calling the Federal Convention, except that of Congress; the States merely responded to the call in appointing Delegates. The Federal Convention proposed a change in the mode of ratifying the Constitution, which was submitted to Congress for its approbation; and

by the authority of Congress this change was adopted and carried into effect. If there was any proper authority for submitting the Constitution to the State Conventions composed of Delegates chosen by the people in each State, it was wholly derived from Congress, which sanctioned this mode. Congress, which ordered the revision of the Articles of Confederation, when it had official evidence that the conditions had been complied with, exercised its authority by ratifying and adopting the Constitution as the form for administering the government of the United States, and thus appointed the time for choosing Presidential Electors, and also for commencing the proceedings under the said Constitution.

Congress expressly referred to its authority in the Articles of Confederation, when it ordered the Federal Convention, and needed no additional power to order and to ratify the Constitution, and make its provisions obligatory on all the people; provided they did not interfere with the *principles* of liberty, which it was not only unauthorized to impair or abridge, but which it was from the first expressly charged with the duty of defending at all hazards. In ordering the Constitution to go into operation, Congress merely changed the mode of administration, which it had authority in the Articles of Confederation to do, and which it had done more than once before. It exercised no new powers. It only provided what was considered a more perfect mode of administration, with a view to the greater security of the rights and happiness of the people. The powers of sovereignty in Congress from the people were adequate, and no addition or diminution of sovereignty resulted from that change in the form of government; there was only a change in the distribution of its powers. The great purpose of forming the Constitution was, to preserve the rights and liberties of the people, and thus to secure their happiness by means of a better national government.

Sovereignty is a trust, incapable of being voluntarily surrendered or parted with by the holder, except with the general consent of the people. It is a trust, committed to the holder for a time, which he cannot dissolve or terminate. He must hold on to it and defend it, or be crushed in defence of it. It is provided in the Constitution of the United States that amendments to, or alterations in, that instrument, may be made in a certain way, such as relate only to the form of administration, but not to the great principles of human nature. An alteration here would affect the *basis*, the true platform of American government. It would be *Revolution* with a vengeance, and destructive of the principles of liberty—which our fathers did not dream of. They did not suppose that the principles of legal rights and securities would depreciate in the world; they did not suppose that the humanity of man for man would degenerate; but they hoped that the great movement of society would in time be more and more effective for the realization of the great principles of right and liberty among a numerous people. The alteration contemplated by the Constitution is only when a different distribution of powers and functions would seem to be better adapted to securing the happiness of the whole people than the present.

It is a singular fact in the history of our government, a fact, which claims the notice and deliberate consideration of all impartial minds, because it shows the prevailing spirit and tendency of the times, that the memorable band of Patriots, who so wisely and successfully directed the operations of the Revolution, achieved the Independence of the United States, and, to secure the resulting benefits, gave to our Constitution its characteristic form and efficiency, should have been practically so soon disregarded, and even repudiated; and that the great principles, which governed them and many of their successors, should, though they did so much to gain and to perpetuate the great objects of Liberty to all, have lost all authority and influence with very many,

who, as well as their fathers, have derived from those labors all the civil liberty which they have enjoyed from that period to this.

In America, the sovèreignty, a national but a limited one, was committed to the Continental Congress in 1774, and annually confirmed to it by the people till 1788; in 1789, it passed into the hands of the Constitutional Congress, with the confirming voice of the people, as had been annually done from 1774; the last holding it by regular succession in the same way as each successive Continental Congress had done, and as each successive Constitutional Congress has since done until now. The sovereignty has continued unchanged and uninterrupted in the charge of a succession of individuals. Men change, are changed, and die; but Sovereignty has not died, and cannot die; it is like the race which has lived six thousand years, and, for all we can see, is to live many times that number of years. Men, and even bodies of men, are merely the trustees of political power for a limited time, and are responsible for the use of the same, and for the transmission of it unimpaired to their successors. If the authority of the General Government has not been thus transmitted from the Continental Congress, how can it have any other basis for its power than usurpation? By the election of rulers by the people at regular and short periods, their wishes and wants are represented, and their whims, which soon correct themselves,—their rights and liberties also, and their interests and happiness. Here is the field for the exercise of constant watchfulness by the friends of liberty, as the condition of securing and perpetuating it under our system of government.

Government may be unwise,—undoubtedly it has been so more than once; it may be corrupt, through the ambition or covetousness of its members, or of those having it in charge; but those, who have charge of sovereignty, are not at liberty to surrender it, and, at the end of their term of service, it remains to be transmitted to others.

The sovereignty over the people of the British Empire was held by the king and parliament. It was not absolute, but subordinate to Law and the Rights of the people. Our fathers acknowledged allegiance to the king, as the Head of this sovereignty. They never disowned, or wished to disown, sovereignty. Their object was to continue their allegiance without oppression from him, to whom the sovereignty was committed, and to whom they still wished to be liege subjects; but they would not continue it, to be oppressed. The controversy of our fathers with the king, was: Who should hold the sovereignty? Who should be sovereign? King George III, who had oppressed them, or a sovereign of their own making, who should not oppress them? The Revolution consisted not in throwing off sovereignty, and in terminating it; not in abolishing public law, not in destroying civil order, or personal liberty; but simply in transferring the sovereignty which they loved, from those who had abused it, to those whom they determined to bring to a strict account; and whom, if found faithless, they would as readily displace, as they then did the British king.

At the time of our Revolution, our fathers contended for the rights of Englishmen, living in England; among which, was that of freedom, which *excluded the holding of slaves of any race or color;* for slavery received no support whatever from the British Constitution. Slavery formed no item in the powers of British sovereignty. Our fathers transferred to the American Congress only such sovereignty as was still allowed to the king by his subjects in England. The rights, such as Englishmen retained in England, were untouched by our Revolution. Our new Sovereign, the American Congress, on the 4th of July, 1776, held that, among the "unalienable" rights, are "*life, liberty and the pursuit of happiness;*" not merely not placed at the disposal of sovereignty, but, as we understand it, incapable of being so disposed of, by the people themselves. This unalienableness of freedom existed, and was declared prior to, and takes precedence of, both the

Confederation and the Constitution; and both must always, if rightly interpreted, be interpreted in accordance with the obvious meaning of the Declaration of Independence.

Congress could not ratify a Constitution which impaired or abridged the rights of Freedom belonging to the people; for it was charged with the duty of maintaining and defending them. Much less could the people do it, who had committed to Congress in trust their national sovereignty; the people, who had rallied under this government, for fourteen years, to maintain those rights. Neither could they, both united, ratify and sanction, and make obligatory on the people, a Constitution which was in any way subversive of those rights and principles of liberty, which Congress, with the general consent of the people, in 1776, declared to be "unalienable," and which were also, with the approbation of Congress, so declared in other forms, and especially in the preambles of some of the State Constitutions. These declarations and preambles thus constituted the Bill of Rights of all the people, and were deemed sufficient, in 1787, without repeating them or inserting a Bill of Rights in the Constitution of the United States. Any provision in the Constitution, seemingly authorizing or requiring Congress, or any branch of the government under it, to establish, or to aid in the unnecessary continuance of, slavery, would be obviously inconsistent with the principles of freedom, declared and contended for from the first, and would therefore be null and void. Every provision under that instrument must be interpreted in accordance with those principles as belonging to all.

What is the Constitution of the United States? Not the letter, not the words of the instrument,—which are but the body, the visible form, the covering. It is the spirit, the life, the PRINCIPLES, the true meaning conveyed to the mind by a reasonable interpretation of the letter; these are the Constitution. "*Words are the daughters of earth, and things are the sons of heaven.*" The words of the Constitu-

tion are to be interpreted in accordance with the principles of right and of freedom, variously indicated, expressed, and declared, both by Congress and by the people during the whole period of the Revolution, and with what is just and reasonable, as to human rights, up to, and fully as favorable to, human freedom, as the best minds, with their best conceptions of right and law in England and America, had attained at that time, or have since attained. In this way we rightly interpret the Constitution of the United States, and fulfil the benevolent purpose of it, as the working rather of a Divine Providence, than of human sagacity, in the affairs of men, and in aid of human happiness. In this way we shall find, that our Constitution is decidedly anti-slavery.

Burke, in his "*Appeal from the New to the Old Whigs*," says: "What has been said of the Roman empire, is at least as true of the British Constitution—'*Octogentorum annorum fortuna, disciplinaque, compages haec coaluit; quae convelli sine convellentium exitio non potest.*'—This British Constitution has not been struck out at a heat, by a set of presumptuous men, like the assembly of pettifoggers run mad in Paris,

> 'T is not the hasty product of a day,
> But the well ripen'd fruit of wise delay.'

"It is the result of the thoughts of many minds, in many ages. It is no simple, no superficial thing, nor to be estimated by superficial understandings," &c. This is equally applicable to the Constitution of the United States.

The Constitution says, (Art. IV, sec. 2,) "No person, held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor is due."

There is no dispute as to the meaning of this claim, in respect to providing that the *voluntary* engagements for labor or service shall be fulfilled by those, who, having made them, may flee into the jurisdiction of another State, with a view to avoid the labor or service; and there is no objection to the practice of enforcing the fulfilment of such engagements; for it is a part of the Common Law.

Whether the Fugitive Slave Law, so called, of 1850, founded upon this clause of the Constitution, as carried out, and as commonly interpreted, conflicts or not, with a regulated liberty, and the often repeated declarations of the rights and liberties of the people, during the Revolution, I will say this much, that, like other laws, it is *repealable* by Congress; that, if it conflicts with the rights of the people and the privleges of the *habeas corpus* as declared by Lord Mansfield, and, as such, it is intended, not merely as a necessity for the preservation of the Union in that emergency, but to be a permanent law in time of peace and quiet, *permanent* and a "FINALITY," it is unconstitutional, and must be repealed to save the Constitution in its spirit and purpose; for it is obvious, that, by the rendition of fugitive slaves to the owners in slave States, the United States becomes a *party* to, and an *active agent* in, aiding and abetting the institution of slavery, with the moral certainty of being the means of multiplying slaves in the country—a result the same in kind, with the purchase of slaves on the coast of Africa, and with the bringing of them to America, to be, together with their children, made slaves forever.

By the Constitution of Massachusetts, established in 1780, "all men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and *liberties;* that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness." This clause was interpreted, by the Supreme Court of Massachusetts, to have abolished slavery in this State. (*Mass. Re-*

ports, Vol. IV, p. 128.) Such an interpretation is in accordance with the Declaration of Independence, in 1776, and is, therefore, an expression of the national law of the United States. Besides, as the national sovereignty of the United States is one of *freedom only*, it cannot authorize the reestablishment of slavery in Massachusetts; much less can the State itself, which is in subordination to this national sovereignty, reëstablish it. It is abolished for ever;—for to restore it, would be contrary to the Constitution of the United States,—and therefore is impossible.

So also, in respect to the six States of the original Thirteen, in which slavery was supported by local law, in 1788; namely, New Hampshire, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania, wherein slavery, having been abolished, is abolished forever, in harmony with the Constitution of the United States; and the territory of these States respectively, is henceforth the land of freedom. They did it, as under the supreme authority of the freedom of the United States; and thenceforth the United States recognized these States as *free*, in which it could not itself exercise any power, sovereignty, or dominion, by aiding, continuing, or establishing slavery in any manner, except for the most urgent state necessity, as in time of war. Consequently, the forcible rendition of a fugitive slave from Massachusetts, or from any free State, is against Law itself. The abolition of the local law, which supports slavery, is left by Congress to the States; and, when they have abolished it in their respective limits, their act is at once ratified and confirmed by the national sovereignty, which has full authority over this whole matter, and has made this one of the essential conditions of chartering States; namely, that, where slavery does not exist, it shall never be established there, nor shall any power be there exercised to uphold it; and, where it does exist, if a State abolish it, that State has no power to reinstate it; and it is guarantied by the United States, that slavery shall never be reëstablished nor supported there forever.

The language of the Bill of Rights in Virginia, passed June 12, 1776, nearly a month before the Declaration of Independence, and which was retained by the Convention in 1851, and is still in force, is equally strong in favor of freedom, as that of Massachusetts in 1780. But in Virginia, the *local* law in support of slavery, which denies to slaves their rights as "*men*," preceded, and was more fundamental, than the Constitution itself. Otherwise, there would have been a plain contradiction between the Bill of Rights, and the whole course of practice, respecting slavery in that State, from that time to this. The first article of the Bill of Rights says, "That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and *liberty*, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." This provision has been interpreted according to the *local* law, which supports slavery in Virginia, and is limited to the whites. Mistakes are often made by not understanding that the local law of Virginia rides over, and sets aside, the principles of freedom in respect to colored persons. By the present Constitution, adopted in 1851, (Article IV, sec. 19–21,) slaves, thereafter freed, may, after being in the State one year, be reduced to slavery. Laws may be made to restrain emancipation, and to remove from the State the free negroes. No law can be passed to emancipate a slave and thereby make the descendants free.

By the fugitive law of 1850, the fugitive slave is denied the right of *habeas corpus*, which, by the Common Law and the British Constitution, secures personal freedom, except for crime, to every person, without distinction of color or race. This right was included in the liberties which our fathers contended for in the Revolution; and it has never been surrendered to any power on earth, by the people of the United States, and is incapable of being alienated. It be-

longs to the whole people, who have a right to demand that it shall be enjoyed by every person in the United States. It is a right, which the limited sovereignty, transferred from England to America, has no authority to take from any person within its jurisdiction. An absolute sovereignty, which could take away this personal right, was not possessed nor claimed by the king in England at the time of our Revolution, neither has it been since. It would be usurpation there; and it cannot be less here.

What is the value of government, what is the security of the rights of any individual, if the Government allow to some, and, in the exercise of power, refuse to others, their personal rights, by a permanent custom, rule, or law, in time of peace and within our own borders? You or I may be the next victim of oppression. What safety can there be for any one, if the government, and all in authority, do not, in the best way they can, defend and maintain the rights of all, for the benefit of each and of all?

A person charged with *crime*, is deprived of liberty by arrest, and is at once tried before a magistrate, who orders him to a higher tribunal; because there is evidence of probable guilt. The person may be afterwards sentenced to the penitentiary for life. He is deprived of his personal liberty *against his will.* Why? Because he had violated the rights under the Constitution of the United States, which are supposed and understood by all, as the rights of law and order belonging to all, and guarantied by the Constitution. He is the guilty one. He voluntarily rebelled against these rights, and liberty is the forfeiture for his crime. There is no better mode known, of disposing of such a person, and at the same time maintaining the rights of the people, which the Government is solemnly bound to maintain. At first, the criminal had his right of personal liberty as fully as any one; and he parted with it by voluntarily violating the rights of the whole community. Therefore, unless he is confined, the rights of no one are safe. He has been tried by a jury of

twelve men, as was his due; but the innocent black man is denied the right of such a trial!

The sailor, on any part of the wide ocean, with confidence looks up to the American Flag for protection, and the American merchant, or traveller, in whatever city or country he may be on the face of the earth, feels that he has a right to the protection of his government; and, if either of them is wronged by any other nation, civilized or savage, he has a right to a redress, to be enforced by our government, at any sacrifice to the nation. It is the purpose of all governments but despotisms, to protect individuals in their rights, at home or abroad. This is the proper function of our government; and if it be indifferent, if it neglect to use the means,—the whole resources of the nation being placed at its disposal, for this purpose, what is it worth? To the black man, held as a slave, protection is refused; freedom is denied. To him there is no country of equal law. In 1777, when General Whipple of New Hampshire was on the way to Saratoga, just before the surrender of Burgoyne's army, he said to his African slave, Prince, "If we should be called into an engagement with the enemy, I expect you will behave like a man of courage, and fight like a brave soldier for your country." Prince replied, "Sir, I have no inducement to fight; I have no country, while I am a slave. If I had my freedom, I would endeavor to defend it to the last drop of my blood." He was freed on the spot.

The General Government is a *national* government, to which only a limited sovereignty was given by the people. States are subordinate to it, and coördinate to each other. It may for a time tolerate or permit slavery to be managed, continued, or abolished by the local law, as under the central or national sovereignty, which, being a sovereignty of freedom, cannot aid slavery. But, should slavery be so managed as to be obviously dangerous to the nation itself, then Congress would do its duty only by restraining it, and by preventing harm to the Republic, in the best way it could.

But slavery, once abolished by a State, is abolished forever; and no State can reëstablish it, nor even the United States, whose spirit and commission are both for freedom, and both are under the principle of the Common Law, which forbids slavery.

In 1776, Congress recognized the Thirteen United Colonies as the United States, which were respectively under their own local laws, and in which Congress forbore to interfere with the institution of slavery. When the Constitution was adopted, in 1788, slavery existed by local or State law, in all the States, except Massachusetts. Since then, six out of the remaining twelve, have, of their own accord, abolished slavery; thus doing the work, which belongs to the Government at the proper time to do, and thus fulfilling their part in the expectation then entertained, that all would do the same in a reasonable time. The other six have neglected to do it to this day; and to these six, nine new slaveholding States have been added.

Before 1820, Kentucky, taken from Virginia, had been admitted as a State, in 1792; Tennessee, from North Carolina, in 1796; and Mississippi, in 1817, Alabama, in 1819, both from South Carolina and Georgia; but the territory of these States was before slaveholding, or under a local law of slavery; for Congress respected the arrangements and grants, as they existed under the Sovereignty before the Revolution. Thus, there was a show of propriety, and only a show, in the forbearance of Congress to abolish slavery on the admission of these States.

In 1803, the United States purchased of France the Louisiana Territory; the "inhabitants of which," by the Treaty, "shall be incorporated into the Union of the United States, and admitted as soon as possible, *according to the principles of the Federal Constitution*, to the enjoyment of all the *rights, advantages, and immunities of citizens of the United States;* and, in the meantime, they shall be maintained and protected in the free enjoyment of their *liberty*, prop-

erty, and the religion which they profess." In a *Memorial to Congress from Boston, on restraining Slavery in New States*, prepared by a Committee, of which Daniel Webster was Chairman, and submitted December 15, 1819, it was argued that "the rights, advantages, and immunities, here spoken of, must, from the very force of the terms of the clause, be such as are recognized or communicated by the Constitution of the United States; such as are *common to all citizens*, and are *uniform* throughout the United States. The clause cannot be referred to rights, advantages, and immunities, derived exclusively from State Government, for these [rights, &c., derived exclusively from State Governments] do not depend upon the Federal Constitution. Besides, it would be impossible that all the rights, advantages and immunities of citizens of the different States, could be at the same time enjoyed by the same persons. These rights are different in different States; a right exists in one State, which is denied in others, or is repugnant to other rights enjoyed in others."

In the Memorial and Remonstrance of the American Convention for promoting the Abolition of Slavery, &c., which was held at Philadelphia, October 5, 1819, presented to the Senate of the United States, December 15, 1819, is the following just statement: "Principles of plain and acknowledged justice may sometimes have been suspended or overruled, from a belief of State necessity. In the origin of political associations, mutual concessions are sometimes required, and an overruling public urgency suggests, while it regrets, the adoption of measures, the danger of which is even partially anticipated. Of this nature was the toleration of slavery in the formation of our present Constitution."—(*American State Papers, Misc.*, Vol. II, p. 547.)

The danger of tolerating or allowing slavery had been "partially anticipated;" and the toleration was continued as a matter of prudence, though strictly it was incompatible with the spirit and intent of the American sovereignty and of the Constitution of the United States.

By these very terms, the land was free. Our government, being one of freedom, could receive that territory only as free; and, consequently, without an usurpation of power, could not rightfully establish, authorize, or license, slavery there, or put freedom to hazard by leaving it to the issue of a popular vote. Evidently, then, Congress transcended its powers in granting or authorizing slavery without restriction there. It had failed to do its duty, in not providing for the abolition of it, either directly or prospectively, in Louisiana, in 1812; when that State, taken from the Louisiana Purchase, was admitted into the Union. So, also, it failed to do its duty in Missouri, in 1821, and in Arkansas, in 1836, both taken from the same territory. So, also, in Florida, in 1845, ceded by Spain, in 1819; and, also, in Texas, annexed in 1845. The same neglect of duty by Congress, and the same usurpation of power, were shown when Utah and New Mexico were incorporated as Territories, in 1850, without restriction on slavery. They were incorporated even without providing for the people, who may reside there, the enjoyment of the common principles of the Federal Constitution, which can be only those of freedom; not those of any one State, but such as are *common* to all the United States, together with such rights and privileges as may on these principles be granted to the people. This view of the subject is grounded on the great fact, that American Sovereignty was from the first charged with the solemn duty of maintaining and defending the principles of freedom and equal rights to all, without respect to color or race; and could not, without neglect of duty, omit opportunities for limiting or mitigating the evils of slavery; nor, without an usurpation of power, never delegated by the people, establish or license it in any part of the land.

The freedom of territory, necessarily existing the moment it is annexed or ceded to the United States, as under the Constitution, is the doctrine maintained by the late Mr. Webster, who, in his speech at Buffalo, in 1851, said, "My

opinion remains unchanged, that it was not within the original scope or design of the Constitution, to admit new States out of foreign territory; and that for one, I never would consent; and no matter what may be said at the Syracuse Convention, or at any other assemblage of insane persons, I never would consent, and never have consented, that *there should be one foot of slave territory beyond what the old States had at the time of the formation of the Union!* Never! Never! The man cannot show his face to me and say he can prove that I ever departed from that doctrine. He would sneak away, and slink away, or hire a mercenary press, that he might cry out, What an apostate from Liberty Daniel Webster has become! He knows himself to be a hypocrite, and a falsifier."

When the people of Texas parted with their national sovereignty, and assented to become a part of the United States, there was a condition inserted in the Treaty, by which the people of that country might claim to have several new States, that might be formed out of it, admitted into the Union without any restriction on slavery. This condition was agreed to by Congress. But it involved an obligation, the fulfilment of which could not be legitimately carried out; as the people have never delegated powers to Congress, except to maintain and defend liberty, which excludes slavery; and the fulfilment necessarily invades the rights of liberty, which were reserved from the first, and, in 1776, were declared "unalienable." The obligation must, therefore, be null and void.—The agreement to this condition is beyond the *limited* sovereignty of the United States; for it belongs only to *absolute* sovereignty, which has never been delegated to Congress, and can never be exercised by our government, except to save the nation; as in time of war, and then, only for the shortest possible period.—To fulfil this specific condition would be an exercise of *power*, but not of *right;* and would be a perseverance in a course of inadvertent usurpation, which is equally at

war with republicanism, with the liberties of the American people, and with the rights of human nature. To refuse to fulfil it, is no breach of faith, on the part of the United States; for the principles of the American government are those of liberty, and are incompatible with licensing slavery in that or any other territory; and, besides, the powers of the American government must be interpreted according to the best sense of justice prevailing among men.

As to the District of Columbia, ceded to the United States by Maryland and Virginia, Congress could not receive it but as free territory; and the moment it was ceded to the United States, the sovereignty of freedom was over it, and Congress had the right, and it was its duty, to provide for the abolition of slavery in that District, sooner or later. It could only tolerate or suffer it for a time, from the seeming necessity of the case. It may be said, that the continuance of slavery in the District of Columbia was a condition of its cession to the United States, as was allowed by the late John Quincy Adams. But such could not be a condition obligatory on the United States, whose national sovereignty is one of freedom only; and, as such, could at any time rightfully abolish slavery anywhere in the land, whenever the public good, in the opinion of the people, should require it as a matter of urgent necessity, or such a measure would obviously contribute largely to the well being of the whole people of the United States.

It follows from this, that Congress has a right,—has authority, to regulate and prohibit the slave trade between States, as well as to abolish slavery that may remain in any territory of the United States, whether belonging to it at the time of the Revolution, or since acquired. By the Constitution, (Art. I, sec. 8,) Congress has expressly the "power" "to regulate commerce" "among the several States," as well as "with foreign nations." Has it not power, then, to regulate the slave trade among the States? It has no authority to create or establish slavery anywhere; much less have

States, which receive their existence from the United States. The national sovereignty, transferred by the people from the British king to the American Congress, which, as it contained no power for creating or unnecessarily continuing slavery there, was equally limited here; and the people have since granted it no new power in this respect, and could not, without violating principles declared "unalienable." As it is with the sovereignty of England, which, on account of the seeming urgency or necessity of the case, has left for a time to the local jurisdiction the abolition of slavery, of which a case occurred in Scotland in 1778, of the same kind with that in England in 1772; so in the United States, the General Government merely permits the existence and regulation of it in the local, that is, State jurisdictions; and thus, States, as under the United States, regulate slavery within their several limits, with power to abolish it if they think fit; or to continue it, for a time, from necessity. If it be abolished in a State, it is abolished there for ever, as under federal or national authority. This action by a State is a part of the sacred duty of the General Government done, by which slavery is rendered incapable of being resuscitated, either by the States or by the United States,—by any authority they have received, either from sovereignty transferred from England and committed to them, or by any grant of power whatever from the people themselves, without violating the principles of freedom set forth and contended for in the time of our Revolution, or since.

Government in America, both National and State, the latter of which is derived from, and must always be subordinate to, the former, before it can have any right or authority whatever to create or establish slavery in territory that is free, or unnecessarily to continue its existence,—must undergo a Revolution, and be placed upon altogether a different basis. It must have a basis, which will authorize inequality, injustice, and barbarism; a basis, opposed to the Common Law, which extends over the whole British empire

and the United States, and in like manner opposed to the unvarying and unalterable principles of the Christian religion and the moral sense of mankind, which are the only true principles of human freedom, law, and progress, in all time, and under all circumstances. Personal freedom is one of the most important results thus far secured by Law. Government in America cannot for a moment justify slavery. It cannot even tolerate it or forbear to abolish it, except for reasons of urgent state necessity.

The only excuse for delay in carrying out and making *practical* the *principle* of liberty of the Common Law in America,—the only apology for suffering or permitting slavery to remain one hour in the United States, is the necessity, or the seeming necessity of the case: the institution is an evil, merely tolerated, however reluctant the friends of true liberty may be in waiting, in obedience to and faith in Providence, for the time of its removal. But no excuses can be received for the forbearance to do everything for the purpose of mitigating the evils of slavery, in respect to either slave or master; for the effects are perhaps equally great to both, as members of social life, and as moral beings.

We do not urge immediate emancipation. We doubt the expediency of it. We leave this matter to the course of events under Providence. The slave must be prepared for freedom before it will be a blessing to him. The master must also be prepared for such a change in the whole arrangement of things, as would result to individuals and to society, from putting an end to this institution in slave States. We distinctly disclaim any wish or purpose to interfere with the rights of property derived from the local law. Let slavery remain in the original slave States, to be managed by them in their own way, for the present, and until some great necessity, of a national character, demand a change; and then let some suitable adjustment be made, in which all, both slave-holding and non-slave-holding, and all

others throughout the country, and throughout the world, shall rejoice, as a measure of emancipation to millions, of security to more millions, and of joy to all the earth.

But, when any steps are taken for the purpose of perpetuating slavery, or for establishing it where it did not exist before by local law, such a step must be regarded as utterly inexcusable. The condemnation is perfect and absolute. Such direct aid to the institution, is for an institution incompatible with, and contrary to, the principles of freedom, and of the Common Law; principles, which formed a part of the rights and liberties, "for the maintenance and preservation" of which, *the people* of the Colonies formed a National Union in 1774; and which, Congress, repeatedly, without qualification, declared itself bound to defend, in the best way it could; principles, which it declared in 1776, as "*unalienable*;" that is, principles of right, which the people in no circumstances could part with, or be deprived of. These principles of the Declaration, not excepting one of them, specially naming the rights to "life, *liberty*, and the pursuit of happiness," are the principles of the Revolution, upon which is established all government in America, both National and State.

To delay unnecessarily the abolition of slavery, is a faithless neglect of duty on the part of Government. Any attempt to perpetuate or extend the institution, is an attack upon the very principles of government itself. To establish it, or to authorize the establishment of it, is a war upon the principles of liberty and of the Constitution,—a war upon the unalienable rights of human nature. This last is an attack upon, and endangers, every right of every citizen of the United States; for, if Congress should presume to do this, it would show that it had forgotten or neglected its trust; that, in neglecting one obvious duty, its sense of duty, and its faithfulness, were alike imperfect and impaired; that nothing is safe, at least permanently safe, in its hands; and that, having encroached upon and violated one right, the most important

of all, it has no moral principle to restrain its violation of any other right, or of all rights.

In May, 1774, eighty-nine members of the House of Burgesses of Virginia, declared, in the Articles of an Association they signed, "We are clearly of opinion that an attack made on one of our sister Colonies, to compel arbitrary taxes, is an attack made on all British America, and threatens ruin to the rights of all, unless the united wisdom of the whole be applied." (*Wirt's Life of Patrick Henry*, p. 96.) Noble sentiment, truly patriotic, and most just. Better can hardly be found in the Revolutionary times. It is obvious that, if the British parliament, in violating the rights of *one* Colony in America, betrayed a want of *supreme* regard for right as a sacred thing never to be violated, and that, if it regarded one right so lightly as to surrender or violate it, it had not a due regard for the *principle* itself of right. It was, therefore, perfectly correct to say, that *an attack upon one colony is an attack upon all.* So we say, that an attack by Congress upon one of the rights of the American people, declared "*unalienable*," July 4, 1776, shows too little regard for the *principle* itself of right, and necessarily involves a liability to an attack upon all rights, and destroys all confidence of security against a violation of any and of every right of the people. Hence the importance of the constant vigilance of the people, to check the FIRST INROADS UPON LIBERTY made by those intrusted with power.

In the "*Farmer Refuted*," published February 5, 1775, Mr. Hamilton said:

"Had the rest of America passively looked on, while a sister Colony [referring to Massachusetts] was subjugated, the same fate would gradually have overtaken all. The safety of the whole depends upon the mutual protection of every part. If the sword of oppression be permitted to lop off one limb without opposition, reiterated strokes will soon dismember the whole body. Hence, it was the duty and interest of all the Colonies to succor and support the one which was suffering. It is sometimes sagaciously urged, that we ought to commiserate the distresses of the people of Massachusetts, but not intermeddle in their affairs, so far as perhaps to

bring ourselves into like circumstances with them. This might be good reasoning, if our neutrality would not be more dangerous than our participation; but I am unable to conceive, how the Colonies in general would have any security against oppression, if they were once to content themselves with barely *pitying* each other, while Parliament was prosecuting and enforcing its demands. Unless they continually protect and assist each other, they must all inevitably fall a prey to their enemies.

"Extraordinary emergencies require extraordinary expedients. The best mode of opposition was that in which there might be a union of councils. This was necessary to ascertain the boundaries of our rights, and to give weight and dignity to our measures, both in Great Britain and America. A Congress was accordingly proposed, and universally agreed to."—(*Hamilton Papers*, Vol. I, pp. 156, 7.)

Prior to 1820, as already stated (p. 57), five slave States; namely, Kentucky, Tennessee, Louisiana, Mississippi, and Alabama, had been admitted into the Union, under such circumstances as were not thought to demand the immediate abolition of slavery, and, accordingly, no restriction was imposed; but, if Congress had been true to the trust it had received, it would at least have provided for its extinction after a certain specified period. In 1820, Missouri was admitted without restriction, and at the same time slavery was prohibited in the Louisiana purchase, north of latitude 36½ degrees.

The Louisiana Territory, purchased of France, was under the local law at the time of the transfer, but subject to the sovereignty of freedom ever after. Its local law was liable to a repeal, or to such modifications as might be deemed conducive to the good of the nation. Congress cannot be charged with faithlessness in declaring the fact of freedom, in the territory north of latitude 36½ degrees; for freedom, as a right, existed in all that Territory, from the time it was received under the sovereignty of the United States. Therefore, this part of the act was simply declaratory. There was, then, nothing but assumption of power, not delegated by the people, when Congress authorized slavery in Missouri, in 1820. This provision in aid of slavery was *partial, sectional, anti-republican*, and *uncon-*

stitutional. It violated one of the most essential rights of the *whole* people, guarantied to them by the Constitution; whereas Congress was bound sacredly to maintain all their rights. This provision, as an act of a free government, was null and void; for it belonged rather to despotism than to freedom. To abolish slavery, or to aid in the abolition of it, is to aid in the maintenance and defence of the rights of the people, and thus contribute to the fulfilment of the purpose of delegated power in America. To establish it, is to *interfere* with and to violate the rights of the people, committed to Congress to defend. Congress can, only from necessity, and for a short time, tolerate slavery in the public domain; since its duty always is, to extinguish it at the earliest possible time, and to keep this end constantly in view.

That act, by which Congress, in 1820, prohibited slavery north of 36½ degrees, and authorized it in Missouri, where freedom existed by right under the American sovereignty, was called a "*Compromise.*" A compromise with what? With that which the common sentiment of mankind, during the Revolution and since, has condemned as morally wrong, unjust, and unequal! Can any one, can any body of men, compromise or compound, with such palpable wrong? *Compromise* is improper to be ever applied to "*inherent*" and "*unalienable*" *rights*, as they were called in the Constitution of Virginia and in the Declaration of Independence. These are incapable of any compromise whatever. The wrong is, that Congress should, on any consideration, have authorized slavery in any new State by a *compromise!* The only apology that can be made for the members, who voted for such compromise, is that they did it ignorantly or inconsiderately.

A *compromise* can be made between two parties, whether individuals or bodies of men, only when each party has a perfect right to give up his interest or claim involved in the controversy. Even in matters of common business, it is

wholly unjustifiable in an agent, without special authority from the principal.

But a compromise is not applicable to rights based on the great fundamental principles of a free government. The delegates in Congress received only such powers as belong to the American sovereignty, which, like the sovereignty of England, is limited by the principles of freedom. They are thus restricted in the exercise of power. Those who are invested with power in America, have received it as trustees, and are always amenable to the people who intrusted it to them.

It is said, that there was implied a *compromise* between the *North* and the *South*, for the sake of peace; the former making concessions of Freedom, and the latter being appeased by the sacrifice. If so, Congress neglected its obligations to the whole people, its duties as a legislative body, and used its powers for *party* and *sectional* purposes; when it was bound to legislate only for the *whole* people, in a manner to preserve unimpaired the great principles of freedom with which it was charged. Such a concession of rights, we believe, the people of the South would scorn to accept, the people of the North would refuse to make, and the *whole* people of the United States would repudiate.

Properly, a compromise, by which a portion of the rights of the people is surrendered, cannot be made by Congress. Freedom was never committed to it but to be defended. The whole charge and power was to secure, to protect, to defend freedom. It could not *compromise* it away. Neither the North nor the South could offer or accept such a compromise. If, inadvertently, such a compromise was made, Congress was wholly unauthorized by the people to make it; and therefore the act itself was at once null and void.

The term Compromise is applied to certain acts of Congress, in 1850, sometimes called "*Compromise Measures*;" the chief of which, in relation to the present subject, is the

forcible rendition, by the General Government, of a few fugitive slaves unfortunately found in the Free States.

The term, "*Adjustment Measures*," as applied to these acts, may be less offensive to taste, but still it does not abstract one jot from the *moral* offensiveness of their purpose and end; of which measures, that regarding the rendition of fugitive slaves, is principally dwelt upon by the people of the United States.

The Missouri Compromise, so called, is said by some to be a "*compact.*" If a compact, by what right was it made? In what did it consist? And who were the parties? Not by any right under the Constitution. It consisted in Congress authorizing slavery in a part of that territory, (the whole of which by right was free before,) and prohibiting it in all the rest. The parties, *immediately* interested, on the one side, were those living on the north of the line, and, on the other, those living south of that line,—together with their respective successors; the South licensed to make slaves of men, the North declared to be free. But, *indirectly*, the *whole people* of the United States were interested, whose Constitutional rights were thereby invaded. If Congress now repeal what relates to freedom in this compromise or compact, and license slavery north of that line, the people there have a just right to complain of the bad faith of Congress; and this example of bad faith is a just cause of alarm and complaint, also to those living south of that line, including the people of Missouri, lest, by the same bad faith, they may be deprived of that which relates to slavery. Moreover, the *people of the whole country* have cause to complain, on account of this breach of contract, that no faith can be placed in Congress for the security of any of their rights and interests; and there appears too much reason to fear, that might and not right, that "the power but not the justice," "not the wisdom," of Congress, will direct our national affairs. Such a dilemma is among the consequences of an act, which may be regarded as one of a succession of

acts, resulting from the exercise of power which was never delegated, and which is strikingly at variance with the established and ruling principles of our Fathers, in originating this Union, in conducting the Revolution, and, also, in the formation and early administration of our present Government.

It is obvious, from the character and structure of the American Government, limited by the "inherent" rights of the people, as we have traced them in our Revolutionary history, that, if the Missouri Compromise is of the nature of a contract for authorizing and licensing slavery in Missouri, it is not binding upon the United States, and is of no value whatever. For this reason, that the whole territory, by the *freeness* of our government, was incapable of unnecessarily continued slavery,—was *free* territory the moment it was ceded by France. Slavery, which had existed there under Spain and France, was merely tolerated after the cession of the territory, and was subject to no direct action of our Government, except such as tended to its abolition, sooner or later. Congress acted consistently, in declaring the preëxisting fact of freedom *north* of 36½ degrees; but it violated a sacred duty, in actually *legalizing* slavery *south* of that line.

When it was proposed to admit the State of Missouri, the question was, whether slavery should be allowed to continue there, where it then existed to some extent under the local law by the mere toleration of the United States. The people of the Free States were generally in favor of a restriction. It was the prevailing expectation, even in the Slave States, that a restriction would be imposed; and, when that State was admitted without it, the passage of the act was hailed as an unexpected triumph by those who were in favor of continued slavery.

It would seem, that, in 1854, Congress professedly undertook to correct the errors of 1820, and to restore to the people their rights which had been encroached upon by the

Missouri act. What did it do? It did what it ought not to have done, but omitted to do that which it ought to have done. If it had restored to freedom that part which the former Congress surrendered to slavery, and had left Nebraska and Kansas free, it would have done a work, according with the principles of the Common Law, of our Revolution, and of the Constitutions both of England and of the United States. But it preferred to omit this, and to undo that which had been rightly done before.

In 1820, the *Missouri Compromise* act meant, on the one part, the *authorizing of slavery* in Missouri, where freedom existed by right under the United States sovereignty, and, on the other part, the *assured continuance of freedom* in the territory north of that State. But, in 1854, (so great has been the change!) the license of slavery in Missouri is overlooked, or passed over as right, while the free part of that compromise or compact, is construed to mean *freedom on sufferance only*, which Congress can no longer allow,—though freedom was as fully guarantied by this, as slavery was by that, part of the compromise, thirty-four years before! The declaration of the just and Constitutional rights of the whole people is revoked; while the encroachment upon those rights is untouched, though each formed a part of one and the same act!

In 1820, the people revolted at the idea, and were long agitated, that our Government had entered on the career of a slave agency. But, for the surrender of their rights of freedom over one section of the Missouri Territory, they were then taught to believe they had a valid and permanent consideration, in the declared continuance of freedom over the other.

In 1854, however, that consideration is unscrupulously sacrificed, as being an unconstitutional "*interference*" with State Rights, and an unjustifiable impediment to slavery. What consideration is now offered to the people of the United States for taking from them their security for free-

dom, hitherto undoubted, in the Territories of Nebraska and Kansas?

In 1820, when there were 11 *free*, and 11 *slave* States, the members from the *former* constituting a large majority in the House, the votes for legalizing slavery in Missouri, on the 2d of March, were, in the Senate, 27 to 15, and, in the House, 90 to 87. Four days after, the bill was signed by a *Southern* President. Of the majorities, *five* in the Senate, and *fourteen* in the House, were from the *free* States. Thus, this license of slavery by means of the *Missouri Compromise*, was not, and could not have been, effected without the help of the *free* States.

In 1854, the *Nebraska* wrong was not wholly consummated by the *South*, nor by the people of the *slave* States, nor by their delegates in Congress; (for these were a *minority* of *two* in the Senate, and of *fifty-four* in the House.) A greater censure justly lies against the *North* for aiding the perpetration of this wrong, than for that of the *Missouri Compromise*. This bill was introduced into Congress by a *Northern* Senator, and passed the Senate at five o'clock on the *morning* of the 4th of March, by a vote of 37 to 14, in which the majority contained *fourteen* Senators from the *free* States. The vote, in the House, on the 22d of May, was 116 to 103; and the majority contained *forty-four* Representatives from the *free* States, *more than three times* as many as in 1820. On the 30th of May the bill was signed by a *Northern* President. The thing could not have been done by the *South* alone; effectual aid was rendered by the *North*, which might have prevented the enactment, as the Journals show. Though the delegation from the *free* States, in the House, in 1854, was over 5 *per cent. greater* than in 1820, its *actual* vote for the surrender of freedom in Nebraska, was over 12 *per cent. greater* than it was for the surrender of it in Missouri,—a fact not encouraging to hope from *such* security, for any of the rights of the people of the United States. Had not the love of true liberty

proved to have actuated still less *this* delegation, the whole vote for it would have been 25 more, and nearly 12 *per cent. greater*, and would have prevailed in the House. Only 72 Representatives from the *slave* States, or 3 less than a *third* part of the whole vote, were for this bill,—a proportion of over 10 *per cent. less* than for Missouri in 1820, when their number was 76, or within 25 of *half* of the whole vote. Thus, the vote from the *free* States was 12 *per cent. more*, and that from the *slave* States 10 *per cent. less* for Nebraska, in 1854, than they respectively were for Missouri, in 1820. In 1820, no representative from the *slave* States voted for freedom in Missouri, but, in 1854, *nine* from these States voted for it in Nebraska. Of the 32 Senators from the *free* States, only 12, and, of the 144 Representatives, only 94, voted for freedom in Nebraska and Kansas, and were "*faithful among the faithless found.*" Let the blame be placed where it belongs.

In 1848, the majority in the Senate, opposed to restricting slavery in the territory of Oregon, finally yielded to the House in favor of freedom. In 1787, there was but *one* member of the Continental Congress, who voted against the prohibition of slavery in the "Territory of the United States, Northwest of the River Ohio."

As to the origin or source, whence power in the American Government was derived, there is a most exact and cordial agreement in the views of many politicians. According to them, it was derived from the *States;* and, among the rights included in it, is that of Sovereignty belonging to each State, called *State Rights* or *State Sovereignty;* and, therefore, in order that the States shall not be "*interfered*" with, in the exercise of it, the repeal of the *free* part of the *Missouri Compromise*, so called by them, devolved on Congress as a duty, logically deduced from the "*reserved*" powers. Among these powers, first of all, is that of sovereign legislation and jurisdiction over slavery within each State for itself; the States having the absolute right to establish,

to regulate, to retain or abolish it, without any control or supervision whatever, on the part of Congress. They assume, that, before the formation of a Territorial government, this power over slavery belonged to the present and future inhabitants of the territory; and, therefore, such inhabitants would be wronged by a restriction upon it in any Territorial or State organization. The idea is, that the right inheres, as it were, in all, including those who are, and those who may be, the inhabitants of the soil. Accordingly, it is claimed as a right, that, in the incorporation of new Territories, and in the admission of new States, Congress shall forbear any action on this subject, and thereby allow the due exercise of self-government; for, by this theory, the American Constitutional self-government can be enjoyed and practised, only in the separate States or Territories. But, if Congress be thus limited, and States thus absolute and exclusive in their respective jurisdictions, must not Congress forbear also to interpose, within any of the States or Territories, to prevent or to stop violence and bloodshed, in cases of insurrection, even in such as may arise from slavery itself in a slave State? And must it not forbear to take a fugitive slave, in any of the States?

By this theory, what conceivable basis is there for the Fugitive Slave Law, which not only authorizes but requires an officer of the General Government, to seize and take back a fugitive slave, wherever he may be found, not merely regardless and in defiance of State authority, but absolutely commanding the aid and coöperation of that very State authority itself? In fact, if such be the subordination of the National to the State sovereignty, the United States *must refuse* either to carry back fugitive slaves, to suppress any slave insurrection, or to maintain the freedom it declared, in 1820, north of 36½ degrees, as *not* within the province of its legislation and jurisdiction.

When and by whom was it clearly discovered, that the power of Congress for controlling slavery, under the present

Constitution of the United States, has become so far inferior to that of the Congress under the Confederation, which, as we have seen, authorized the prohibition of it in territories?

It is true, that, after the many protracted discussions on other subjects in the first three months of their labors,—discussions often so excited as almost to produce despair of any favorable result from those labors,—the Constitutional Convention of 1787, from supposed necessity, did, on the subject of slavery, concede much to the original Thirteen States which existed at that time; but it is equally true, that the concession, or the forbearance to exercise the power, referred to those Thirteen only, and was meant to extend to no other. Their language (*Art.* I, sec. 9) was, "The migration or importation of such persons as any of the STATES, *now existing*, shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight." This language, viewed with reference to the particular circumstances of the occasion, shows most clearly that it was the intention to limit this concession or forbearance to those States. On the subject of slavery, the same sentiment which prevailed at that time in the Convention at Philadelphia, prevailed also in the Congress at New York, as appears from the the following provision of the celebrated Ordinance, passed in the month previous. "There shall be neither slavery nor involuntary servitude in the said Territory, [Northwest of the River Ohio,] otherwise than in the punishment of crimes," &c.

As this Ordinance manifests the same sentiment in a practical form specifically applied, while it shows the exercise of legitimate power under the Confederation; so the rapid growth and present condition of the several States formed in that Territory, sufficiently illustrate the inestimable results from such application, and at the same time indicate the duty of Congress firmly to retain, and consistently to exercise, the power of excluding slavery from all the Territories.

Thus, the Congress under the Confederation, which then was generally considered so weak as to be on the very verge of dissolution, was, in the judgment of its members, sufficiently authorized to prohibit slavery. And the concession, above referred to, or the forbearance to exercise power over slavery, in a certain way and for a limited time, necessarily implies that this power was intended to be *in* Congress, under the Constitution.

It should be remembered that this Ordinance was passed with but one dissenting vote. It should be remembered, also, that, in April, 1784, and again, in March, 1785, an ordinance or resolve, substantially the same as this, in nearly the same words, and intended to be applied to the whole Western Territory, was introduced and acted upon in Congress; and, if questions had been then decided by majorities, as they now are, would have been passed; the votes of the Delegates, in the former case, being 16 for, and 7 against it,—and, in the latter, 18 for, and 8 against it. (*Journals of Congress.*) Thus, there appears sufficient evidence that the power was in Congress under the Confederation, and that the sentiment of a large majority was for controling and prohibiting slavery in the Territories.

But the Constitution was framed for the express purpose of *increasing the power of Congress.* That this power to suppress slavery, thus exercised under the Confederation, was intended to be retained and be a part of the Constitution, is placed beyond a reasonable doubt by this fact, that the following fundamental resolution was passed by the Convention, and referred to the Committee of Detail, as the *basis* of the enumerated powers vested in Congress under the present Constitution:—

"Thursday, July 26, [1787.] *Resolved*, That the National Legislature ought to possess the legislative rights vested in Congress by the Confederation; and, moreover, to legislate in all cases for the general interests of the Union, and also in those to which the States are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation."—(*Madison's Debates in the Convention.*)

However, though this power over slavery was possessed and exercised by the Old Congress, and the Constitution was framed for the purpose of increasing the power of Congress, as we have seen; yet it seems that this power is now claimed for the States, or rather this sovereignty for freedom is now denied to the United States!

Notwithstanding this concession or *forbearance*, so obviously intended to apply to the Old Thirteen States only, it is claimed that the whole power over slavery, was equally possessed, also, by each of the States formed and admitted into the Union *since* that time,—whether comprehended in territory then belonging to the United States, or in any of the portions since acquired; though the specific *forbearance*, considering the reluctance with which the history shows that it was granted, clearly implies that slavery should never be allowed by our Government to extend beyond the *Thirteen States then existing*. That such was the extent, of this forbearance, was the belief of the late Mr. Webster, as we have already seen. (p. 60.)

The forbearance, from state necessity, to prohibit "the migration or importation" of slaves till 1808, could not proceed from Congress unless the power was IN *Congress to restrain slavery;* but this forbearance had reference *only* to the original "Thirteen" States.

It was the great object of Mr. Webster, in his reply to Mr. Hayne, in 1830, to refute this doctrine of *State Rights*. Had the Orator of the North been as successful in *defining* the provisions of the Constitution, on the 7th of March, 1850, as he was in 1830, in defending its *popular origin*, he would have been long regarded and honored, not only as the Defender, but as the *true* Expounder of the Constitution of our Country.

It is worthy of remark that, with this *State Rights* doctrine as the basis of reasoning, two opposite conclusions have been drawn,—the one to justify, and the other to condemn, the Fugitive Slave Law. It has been argued with great inge-

nuity, on false premises, that the States, as sovereignties, had the right to admit or to exclude from their respective limits whomsoever they would, and, in agreeing to and adopting the Constitution of the United States, authorized and empowered Congress or the central government, to exercise this right, and thereby imposed upon it as a duty, to exercise it; and thus, by this *Confederated* agreement, the United States is bound to carry back by force fugitive slaves; on the other hand, the late Mr. Rantoul, with the same premises, (who needs no praise for his very able argument,) maintained, and successfully maintained, that, in the records of the State Conventions, can be no where found any specific declaration by the *sovereign* States, of a surrender of this power to the General Government; and that it therefore remained in each State.

The question recurs, how came the States with this sovereignty? If it be said, that the people of each State gave this sovereignty to their particular State government, and that there were Thirteen Independent Sovereignties at the close of the war, I would ask, *when* or *whence* did the States receive such sovereignty? It should be remembered that, while *yet under the Royal* Government, and, at the same time, acting as individuals on their own responsibility, for themselves and for posterity, in view of the vast and complicated duties to be performed, in order "to secure and perpetuate their rights, liberties, and privileges," the *people* of the Colonies, in 1774 and 1775, committed, surrendered, and confirmed, to their Delegates of the General Congress, all power and authority within their ability to alienate or transfer. And who at that time could be free from anxious doubt, whether even all that power would prove sufficient, or who now will presume to say, that they acted imprudently or unwisely, in thus giving up, as they did, everything to the control and direction of that renowned assembly of Patriots, who, by their judicious and universally approved course of proceedings, in these two years, contributed so es-

sentially to the ultimate accomplishment of the Revolution, and the subsequent establishment of the American Government? All political power, being thus in the hands of the General Congress, and never since recalled nor resumed by the people who gave it, the States never had, nor have they now, any greater measure of power than the General Government has seen fit to allow them. Properly regarded, they are important as the guardians and regulators of their respective local or internal concerns, and as auxiliaries, but *mere auxiliaries*, which are always subordinate to that General Government; having, in the words of Washington, "the *auxiliary* agency of governments for the respective subdivisions."—(*Farewell Address.*)

The States properly are not, but the people as individuals are, constituent parts of the nation. The States were formed *after* the national sovereignty was committed to Congress by the people.

We have already seen (p. 24,) that, as early as May 16, 1775, the Massachusetts Convention requested of Congress "most explicit advice, respecting the taking up and exercising the powers of civil government." In a little more than five months after, namely, on the 18th of October, 1775, "The Delegates from New Hampshire laid before the Congress, a part of the instructions delivered to them by their Colony, in these words: 'We would have you immediately use your utmost endeavors to obtain the advice and direction of the Congress, with respect to a method for our administering justice, and regulating our civil police. We press you not to delay this matter, as, its being done speedily, will probably prevent the greatest confusion among us.'" (*Journals of Congress.*) Also, about the same time, South Carolina and Virginia respectively made similar applications; and Congress, in answer to these requests, on the 3d and 4th of November, and on the 4th of December, 1775, by special Resolves, recommended in nearly the same words the establishment by the people of a form of civil govern-

ment for each of those Colonies. (*Journals of Congress.*) On the 10th of May, 1776, (p. 28,) that is, little less than two months before the formal Declaration of Independence, and preparatory to it, Congress "recommended" generally to "the United Colonies" "to adopt such government as shall" "best conduce to the happiness and safety of their constituents in particular, and America in general;" in the preamble to which, passed on the 15th, it further declares that "the exercise of every kind of authority under the crown should be totally suppressed, and all powers of government [should be] exerted under the authority of the people." (p. 29.)

On the 11th of June, 1776, the Committee for preparing the Declaration was chosen, and, immediately after, it was resolved to appoint a Committee to prepare the form of a Confederation between the Colonies; and, also, another Committee "to prepare a plan of Treaties to be proposed to foreign powers." (*Journals of Congress.*) In the Articles of Confederation, as finally agreed upon, are these words (*Art.* XIII): "Every State shall abide by the determination of the United States in Congress assembled, on all questions which by this Confederation shall be inviolably observed by every State; and the Union shall be PERPETUAL." Thus, all proper authority, as declared by Congress, was taken from the king to be exercised by Congress as the agent of the people, and has been, or ought always to be, exercised by it, as in the organization of a State or Territory. We have already seen that, under the Confederation, in 1787, Congress did exercise sovereignty over slavery Northwest of the River Ohio.

Congress possessed all the powers of a national government under the form prepared by that body, and ratified by the States, whose very title was "*Articles of Confederation and* PERPETUAL *Union.*" Not only in the present Constitution, but in all the plans proposed for a Constitutional form of government, from that proposed by Dr. Franklin, July 21,

1775, to that agreed to, November 15, 1777, the ratification of which by the States was completed, March 1, 1781, there was contemplated, for the security of the people's rights, not merely *permanency* but *perpetuity* of duration, as well as sovereignty over the States and the people throughout the whole extent of the United States, as then bounded. The supremacy of these Articles continued till the ratification of the present Constitution as their substitute, and the organization of the Government under it.

Congress alone was recognized by Great Britain and by other European powers. Not one of the States was mentioned or thought of in the foreign relations. The American Congress, having in itself the sovereignty of a nation among the nations of the earth, was possessed of all the authority that had been given to it by the people,—given to it, even *before* any provisional government whatever, distinct from that of the king, was formed or exercised in any of the Colonies, as we have before stated. In view of all these facts, how can the States claim to be sovereign over the United States, in matters of freedom and slavery, or in anything else? The Constitution declares their subordination.

Ordinary laws are repealable by Congress which makes them. The Articles of the Confederation originated in Congress, and, when accepted by the States, with the assent of the people, in 1781, became the supreme law of the land, as the general form of administration, and could not be repealed or altered by Congress alone. Nor is the present Constitution repealable, alterable, or avoidable, by Congress alone; it is the supreme law over Congress and over States as well as over individuals. It can be altered or amended only in a certain way provided for in that instrument.

The people of each and every State, and every person in the United States, has rights which he can claim of the General Government to secure in the most perfect manner. The security of these rights and liberties depends, ultimately, not on State authority, but on the sovereignty

of the United States, which is always for freedom and equal justice to all.

It is the opinion of many that the clause of the Constitution, before quoted, (p. 51,) requires fugitive slaves not only to "*be delivered up*," but to *be sent back* to their owners; and the wish to fulfil every obligation in good faith, has doubtless reconciled them to the forcible rendition by Government, while their moral judgment condemns it altogether. How far is this opinion correct?

The requirement to "be delivered up," if it refer to fugitive slaves, is a mere *permission* to the owners to take their slaves in any of the States. That it was regarded as a privilege never before enjoyed, as coming from any competent authority, appears from the words of General Pinckney, of South Carolina, who said, in the State Convention on the Constitution, it "*is a right we had not before.*" (*Elliot's Debates*, Vol. IV, p. 277.) It is a mere *prohibition* to all against interfering with the taking of a fugitive slave by his master or agent. This is the utmost limit the General Government can go, without becoming a *slave agent*, and thus violating a Constitution of freedom.—It is of a *negative* character, and does not impose any *positive* duty or obligation, by which any person, or any State, or the United States, is bound in any way to promote the rendition of a fugitive slave.

In the paragraph of the Constitution, which requires that the criminal "shall be delivered up," it is added, he is "*to be* REMOVED to the State having jurisdiction of the crime,"—implying a *positive* obligation. This case is very different from that of the fugitive from service or labor due by contract *voluntarily* entered into by himself or his guardian. Such fugitive is carried back and compelled to fulfil service which he is bound by mutual contract to perform. This rendition is according to the rules and principles of the Common Law, and has regard to pecuniary obligation or its equivalent, but does not invade the rights of per-

sonal freedom. It is in harmony with our Constitution of freedom. But the case of the fugitive slave is altogether different. He is merely "HELD to service," not bound by any contract. He is "*held*" by force, which is all on one side. He never entered into service with his master; for he is incapable by the local law of slavery, of ever making any civil engagement whatever. No contract for slave service can be made under the Constitution of the United States. If he is carried back by the power of the Executive, the Government gratuitously becomes a slave agent under a constitution based on the principles of freedom.

Mr. Webster, on the 7th of March, 1850, said, "You observe, Sir, that the term *slave* or *slavery* is not used in the Constitution. The Constitution does not require that 'fugitive slaves' shall be delivered up. It requires that persons held to service in one State, and escaping into another, shall be delivered up. Mr. Madison opposed the introduction of the term *slave* or *slavery* into the Constitution; for, he said, that he did not wish to see it recognized by the Constitution of the United States of America, that there could be property in men." The term slave or slavery was carefully avoided by the framers of the Constitution. Most of them, and of the people at that time, were opposed to slavery. This sentiment was the prevailing one in the whole country, from the commencement of the Revolution till long after the organization of our present Government. Even as early as May 22, 1774, the people of the county of Hanover, in Virginia, said to their Delegates, "the African trade for slaves we consider the most dangerous to the virtue and welfare of this country; we therefore most earnestly wish to see it totally discouraged." Also, in harmony with what we have seen to have been the action of Congress under the Confederation, and of the Convention in the provisions of the Constitution, we find that, on the 24th of October, 1774, forty-five days after the first meeting of the Continental or General Congress, the plan of an Association

was agreed to and "ordered to be subscribed by the several members," and was subscribed by them,—in which they say, "we will neither import nor purchase any *slave* imported after the first day of December next; after which time, *we will wholly discontinue the slave trade, and will neither be concerned in it ourselves, nor will we hire our vessels, nor sell our commodities or manufactures, to those who are concerned in it.*" At that time slavery existed by the local law in all the Colonies. In the Federal Convention, Colonel Mason of Virginia, August 22, 1787, said, "this infernal traffic originated in the avarice of British merchants. The British Government constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing States alone, *but the whole Union.* The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves as it did by the Tories, &c." (*Madison's Debates.*) On the subject of slavery, the opposition seems to have been turned to silence or great moderation, in the expectation that it would die out, and be abolished by the voluntary action of the people of each State,—this being the most desirable because the easiest way of getting rid of an institution, which all acknowledged and felt to be an evil.

But, suppose we are to consider *slave* service as meant in the Constitution. The slave is bound to service by the local law, only *within the limits* of a State, *and no where else.* Every where else he is a free man. He is a free man under the Constitution of the United States; and even the local law of slavery in a State, is merely *tolerated*,—subject to be set aside, though not as yet set aside, by the sovereignty of freedom in our Constitution. Otherwise, our government is one of slavery and inequality. The moment the General Government acts in respect to that local law, its action must be for freedom, and for freedom only.

The Constitution says, that "no person held to service" "shall be discharged from such service or labor, &c.;" that is, one State is forbidden to make laws and extend its jurisdiction over the affairs of another. States are instituted with powers of government and jurisdiction, only within their own respective limits. No State has a right to interfere with the government and jurisdiction of any other State.

But, if the Executive carry back a slave, in pursuance of a law of Congress, it thereby extends the local law of a *slave* State over another State—even over one that is *free;* and in doing so, besides violating the principle of freedom, deprives States of their equality, and compels some to be subordinate to others. In the most recent slave case in Massachusetts, that of Burns, the slave law of Virginia is forced upon Massachusetts by the Executive of the United States. Why should not the free law of Massachusetts be forced upon Virginia and upon every one of the Slave States, and make them all perpetually free? It is submitted, whether Congress is not *more* bound to do this than the other, as being more in accordance with a free Constitution, and more in harmony with the views and sentiments of a majority of the people of the United States and of the civilized world.

If there is anything of which we Americans can properly boast, especially on the fourth of July, it is that we are a *free* people. What foundation is there for the boast, if *personal freedom* is not a right of every human being within our borders, to be maintained and enforced, not invaded and crushed, by the power of the nation? If but partial security is afforded to rights so sacred, how much better is true freedom protected under our Constitution than under that of England? And how much more are the true principles of free government cared for by the sons, than they were contended for by the Fathers?

It is said, that in adopting the Constitution there was a specific agreement to carry back "fugitive slaves." If so,

the United States has bound itself to be a *party* government, notwithstanding the Declaration of 1776, that "LIBERTY" is an "unalienable right;" for, in doing so, it acts as a *party* agent, and violates the fundamental and distinctive principle of the Government itself.

What then is to be done? If the United States has bound itself to do that which it had no authority to do, it could easily satisfy all reasonable "claim," and thus end the case for ever,—by a just compensation, thereby securing freedom to the slave and all his children, on every foot of soil within the limits of the United States. The purity of the government would thus be preserved, the cause of freedom sustained, and justice done to every individual.

The United States never had any authority from the people to give even a *title* to slave property or in any way so to bind itself to a slave owner, that he could lawfully claim of the Government forcibly to carry back his fugitive slave. It exceeded its powers in promising to do so, if the letter of the Constitution supports such an obligation.

It is said, that it was the *intention* of the Framers of the Constitution that fugitive slaves should be returned. Intention must be limited to the lawfulness of the thing itself; and the rendition, being obviously a *slave* agency, is excluded and forbidden by the principles of a free Republican government.

Congress had no power from the people to ratify an instrument containing this slavery obligation, which is contrary to the charge of freedom it received from the people; and, therefore, could not ratify it without contradicting its own Declaration in 1776, and thereby usurping a power never delegated to it. The people themselves could not, without being inconsistent with themselves through the whole Revolution, and thus giving up what their ancestors had gained for freedom after ages of struggle in England. Congress could not, even in concurrence with the people through their representatives or Conventions, ratify or take a part in rati-

fying a Constitution, which imposes on the Government or the people the duty of carrying back slaves; because, by taking a part in the ratification of such an obligation, this body, having declared its powers and duties to defend freedom, would *contradict itself*, *act contrary* to that principle, and betray its own *trust*. The intention must always be consistent with a reasonable construction of language, and with the principles of a free Constitutional government. Whatever may have been the intention of those who framed the Constitution, and of the ablest minds at the time of its adoption, no provision therein, as an indulgence to slavery, can have any force beyond the *forbearance* to abolish it, and the *permission* to take slaves, within the jurisdiction of the Thirteen Original States only,—conceded at that time from necessity, as the best means of ultimately securing freedom.

It is said that, had not the Constitution recognized slaves as property, it would never have been ratified. This is mere assertion. With more probability, it may be said that the Constitution would never have been ratified, had it been understood to impose the obligation upon the Government actively to aid slavery. The Colonies never before had any legitimate right to or claim for a rendition of slaves. We have already shown that the spirit and action of Congress had been anti-slavery. All its concessions to slavery, had been acquiesced in from strong reasons of necessity, every one implying that the power over it was in Congress, and that the institution was as incompatible with our national sovereignty, as with that of England. Is it probable that eleven States, when the convictions of a large majority of the people were with them, would have disowned all their own acts of humanity and of Republican equality, and yielded to two States, which alone, it is alleged, might, contrary to those convictions, have persevered in depriving themselves of the advantages of a well organized Government? In our opinion the Constitution could have

been ratified only as an instrument for the support of *freedom.* This speculative opinion, of which we are speaking, is improbable in itself, and therefore of very little account. We are concerned with the Revolutionary history, and with a reasonable construction of the Constitution, both showing that it must be for Freedom only.

The language of the Constitution respecting fugitives from service, is very similar to what we find in the Ordinance of 1787, and also to that in the 8th Article of the New England Confederation of 1643. At that early date, there was no central power or government to compel the obedience of any one of the four Colonies which formed that Union. The aid or service required, was voluntarily rendered by each of these Colonies for their common defence. Owing to this weakness, the Confederation existed only a few years. The last meeting was held in March, 1678. The compact was formed chiefly to secure these Colonies against the attacks of their common enemies, the Indians; and the clause respecting fugitives from service, was incidental to the main purpose, and intended to secure service according to the principles of the Common Law. The Colony of New York afterwards agreed to the 8th Article. Only these five Colonies could be bound by it, or have any rights or claims under it. Not one of those Colonies which are now *slave* States, ever joined this Confederation, or ever had any right, by virtue of it, to claim the rendition of fugitives before the Revolution, or even to take a slave from the jurisdiction of any of the five Colonies; though, as a matter of *courtesy*, fugitives from them were delivered up, and probably carried back.

This Confederation was not authorized or contemplated by the Colonial Charters; it was regarded with a jealous eye by the home Government, and was merely *tolerated* as an important means of security to the Colonies.

Had there been any right for claiming the rendition of fugitive slaves, derived from this Confederation, it would have been set aside by the *principle* of freedom declared by

Lord Mansfield in 1772, because opposed to the Constitution of England. It must also have ceased, when our Fathers committed to Congress the national sovereignty, and charged that body to maintain their rights and liberties which were such as belonged to Englishmen living in England, and were the rights of freedom only.

The discussions respecting slavery, and the denunciations of it, generally, by politicians and philanthropists, as they are mainly based on the *State Rights* doctrine, have served little but to excite and disturb individuals, agitate the community, mislead and confuse the public mind,—except, perhaps, to keep alive among the people a general sentiment or emotion for Freedom, often and for the most part indiscriminating, and always unsafe as a guide. Little real progress in favor of freedom can be made without the guidance of sober truth. Much that has been said, it is feared, has been attended only with harm. If, however, the fire of true freedom has been kept alive, of which there has been much need, it may, at length, animate aright the nation absorbed in other cares, and also the Government too much tempted by mercenary and party objects,—and thus unite them both in measures which shall tolerate the institution only from necessity, and restrain it according to the true principles of a free Constitution, as are those of the United States and of England.

The American sovereignty being limited by the *principles* of freedom, the blessings to be derived from it can be secured only by maintaining the control of these principles over Government in all its departments, and by preserving the Government itself free from all influences and practices that are hostile to its great purposes and objects,—whether they proceed from foreign immigration, foreign intrigue or foreign alliance, or from sectional, party or personal favoritism. All such influences infringe upon and undermine these principles, which are equal, and Republican; that is, are of such a nature as *by right* to be equally diffused among all, and

to be enjoyed by every one, according to our best conceptions of Justice, in the imperfect condition of human affairs. Such influences tend to corrupt those in power, wrong the whole people, and render the government unfaithful, capricious, selfish and despotic. Those who have been clothed with power, are charged to defend and maintain the rights of each and of every one, under a system of regulated Liberty,—uninfluenced by ephemeral majorities, or by the *claims* or pretended claims of partisans,—not favoring the rich or the poor, those in office or those out of office, the North or the South, the East or the West,—knowing nothing in civil and political matters but "our country, our whole country."

Let it not be supposed that we wish harm to the interests of slave holders; we would promote them, by securing the rights of the *whole* people. We do not recommend emancipation; nor do we assert that slavery had better be now abolished than for a time continue to be managed under State law. But we do maintain, and insist, that the General Government is charged by the people with the duty of preserving and defending the rights of personal freedom for all, whether white or black; that it *usurps* power, whenever it becomes, in any way, an *active* agent either for unnecessarily continuing or for extending slavery; that, in the exercise of power, it is bound to observe only *one rule* for maintaining the personal rights, such as were guarantied to Englishmen living in England in 1774, and are still guarantied to them,—instead of following *two rules*, one for the *white* man, and another for the *black* man,—one for freedom and another for slavery; and that it shall never violate the *principles* of freedom by any law or exercise of power whatever. The utmost that can be allowed is, that our Government *forbear*, from reasons of seeming necessity, to abolish slavery, and, for a time, *permit* its continuance under the management of the Old States respectively within their own limits,—as the wisest course to be pursued for the ultimate attainment of Freedom and equal rights to all, towards which

a free government, the progress of society, and the teachings of Christianity, all seem to be manifestly tending.

The following propositions have been maintained in these pages, viz.:—

I. All power belonging to the American Sovereignty is derived, not from the States, but from the PEOPLE; otherwise, the government would be a mere Confederation or Confederacy. By the Revolution the people transferred the national sovereignty, which they ever recognized, from the British King to the American or Continental Congress.

II. All power belonging to the American Sovereignty, as well as to that of Great Britain where the *form* of government is monarchical, is, in its exercise, *limited* to the PURPOSES and by the PRINCIPLES OF FREEDOM,—the government in both countries merely *tolerating* slavery, for a limited time, from urgent reasons of State necessity.

III. Every exercise of power by the United States,—by which slavery is authorized in any territory; by which, in the formation of a Territorial or State government, there is a refusal or neglect to abolish it at once, or to provide for its abolition at a future time certain; or by which a fugitive slave is forcibly taken from a State made free by its local law, and carried back to a slave State,—every one of these aids the increase or the continuance of slavery, contrary to the charge of our National Sovereignty of Freedom, renders the United States a *slave agency*, and, as such, is against all LAW, and against the CONSTITUTION OF THE UNITED STATES.

Had the General Government forborne to act as a slave agency, and slavery been left to the local law, according to the understanding of its limits at the time of adopting the Constitution, its extinction would in due time be complete.

The foregoing views are respectfully submitted.

AMERICAN CITIZEN.

Boston, December 1, 1854.

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